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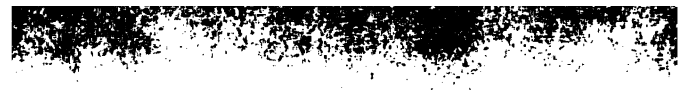

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TO THE

MISCELLANEOUS DOCUMENTS

OF THE

SENATE OF THE UNITED STATES

FOR THE

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IN THIRTEEN VOLUMES.

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WASHINGTON:
GOVERNMENT PRINTING OFFICE.
1886.

7186

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49TH CONGRESS, 1st Session. | SENATE. | MIS. DOC. 162, Part 1.

A DIGEST

OF

THE INTERNATIONAL LAW

OF THE

UNITED STATES,

TAKEN FROM

DOCUMENTS ISSUED BY PRESIDENTS AND SECRETARIES OF STATE,

AND FROM

DECISIONS OF FEDERAL COURTS AND OPINIONS OF ATTORNEYS-GENERAL.

EDITED BY

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AUTHOR OF A TREATISE ON CONFLICT OF LAWS, AND OF COMMENTARIES ON AMERICAN LAW.

IN THREE VOLUMES.

VOLUME I.

WASHINGTON:
GOVERNMENT PRINTING OFFICE.
1886.

PRELIMINARY REMARKS.

The following is the preface to a pamphlet submitted by me, in March last, to Congress:

"In Mr. Fillmore's second annual message, in a passage understood to have been furnished by Mr. Webster, then Secretary of State, we are told that 'one of the most eminent of British statesmen said in Parliament, while a minister of the Crown, "that if he wished for a guide in a system of neutrality, he should take that laid down by America in the days of Washington and the secretaryship of Jefferson"; and we see, in fact, that the act of Congress of 1818 was followed the succeeding year by an act of the Parliament of England substantially the same in its general provisions.'

"Of the same period, Mr. Hall, in the second edition of his work on International Law (2d ed., 1884, § 213), thus speaks: 'The United States had the merit of fixing it (the doctrine of neutrality) permanently. On the outbreak of war in Europe in 1793 a newly-appointed French minister, Mr. Genêt, on landing at Charleston, granted commissions to American citizens who fitted out privateers, and manned them with Americans, to cruise against English commerce. Immediate complaint was made by the English minister, who expressed his "persuasion that the Government of the United States would regard the act of fitting out those privateers in its ports as an insult offered to its sovereignty." The view taken by the American Government was in fact broader, and Mr. Jefferson expressed it clearly and tersely in writing to Mr. Genêt. * * * Taking this language straightforwardly, without forcing into it all the meaning which a few phrases may bear, but keeping in mind the facts which were before the eyes of Mr. Jefferson when he penned it, there can be no doubt that the duties which it acknowledges are the natural if not inevitable deductions from the general principles stated by Bynkershoek, Vattel, and De Martens; and there can be as little doubt that they had not before been frankly fulfilled. * * * The policy of the United States in 1793 constitutes an epoch in the development of the usages of neutrality. There can be no doubt that it was intended and believed to give effect to the obligations then incumbent upon neutrals. *But it represented by far the most advanced existing opinions as to what those obligations were; and in some points it even went further than authoritative international custom has up to the present time advanced. In the main, however, it is identical with the standard of conduct which is now adopted by the community of nations.*'

"'The United States of America,' says Sir Robert Phillimore (1 Int. Law, 3d ed., 1879, p. 555), 'began their career as an independent country under wise and great auspices, and it was the firm determination of those who guided their nascent energy to fulfill the obligations of international law as recognized and established in the Christian

Commonwealth of which they had become a member. They were sorely tried at the breaking out of the war of the first French Revolution, for they had been much indebted to France during their conflict with their mother country, and were much embarrassed by certain clauses relating to privateers in their treaty with France of 1778; but in 1793, under the Presidency of Washington, they put forth a proclamation of neutrality, and, resisting both the threats and the blandishments of their recent ally, took their stand upon sound principles of international law, and passed their first neutrality statute of 1794. The same spirit induced the Government of these States at that important crisis when the Spanish colonies in America threw off their allegiance to the mother country, to pass the amended foreign enlistment statute of 1818; *in accordance with which, during the next year, the British statute, after a severe struggle, and mainly by the great powers of Mr. Canning, was carried through Parliament.*'

"Sir Robert Phillimore, in the passage last quoted, assigns to the Government of the United States the credit of establishing liberal and humane principles of international law at two great epochs:—that of the first French revolutionary war during the administration of Washington and the secretaryship of Jefferson, and that of the reconstitution of the relations of the great powers of the civilized world consequent upon the overthrow of the Spanish supremacy in South America, and the triumph which was then secured to liberal principles by the joint action of England and of the United States in their resistance to the projects of the Holy Alliance. As leader in the first of these epochs of American statesmanship Mr. Jefferson is entitled to the pre-eminence, though there is no question that he was greatly aided in coming to his conclusions by the calm wisdom of Washington. Mr. Monroe was President during the second of these epochs; and the private letters to and by him deposited in the Department of State show that he was aided in reaching the positions which were announced by his administration in this relation, not merely by his cabinet, including Mr. J. Q. Adams, Mr. Calhoun, Mr. Wirt, and Mr. Crawford, but by Mr. Jefferson and Mr. Madison, whom he freely and constantly consulted as to each step in the important action which he then took in the domain of international law.

"But it is not in these two epochs alone that the statesmen of the United States showed commanding ability in this important department both of statesmanship and of jurisprudence. I do not desire to refer to Secretaries of State who are now living, or who, if recently dead, are still associated with immediate political affairs. But when among those who filled the secretaryship in prior days we look back on Madison, on Monroe, on John Quincy Adams, on Clay, on Van Buren, on Edward Livingston, on Forsyth, on Clayton, on Webster, on Calhoun, on Edward Everett, on Marcy, on Buchanan, on Cass, and on Seward, it is impossible not to see that the continuous exposition of international law, so far as concerns this country, fell into the hands of men who were among the first statesmen and jurists of their age, singularly fitted to maintain in all relations, what was maintained in the two relations just noticed, the leadership in the formation of a liberal and humane system of international jurisprudence. And they have ably done this work. I am not unfamiliar with the writings on international law of foreign statesmen and jurists; I have carefully studied not merely the messages of our Presidents, but the volumes, now nearly four hundred in number, in which are recorded (with the exceptions to be pres-

ently noted) the opinions of our Secretaries of State; and after a careful comparison of those two classes of documents I have no hesitation in saying not only that the leadership ascribed to our statesmen in the two great epochs above noticed is maintained in other important relations, but that the opinions of our Secretaries of State, coupled with those of our Presidents as to which they were naturally consulted, form a body of public law which will stand at least on a footing of equality with the state papers of those of foreign statesmen and jurists with which it has been my lot to be familiar.

"But where are to be found the documents which embody these utterances of those charged with the direction of our foreign affairs? It is a fact of great moment to us at present that these documents, in the main, are inaccessible to the mass of those to whom their study is important, as well as to most of those who would desire to appeal to them as guides. I append hereto a table of the standards to which I have resorted in making up the following pages; and it will be seen that three-fourths of them are still in manuscript, accessible only by special permission of the Secretary of State. It is true that the earlier papers of the Department were published, though somewhat imperfectly, in two distinct series of what are called 'State Papers'; and it is true also, that from time to time documents from the Department were printed by order of Congress; that from 1861 to 1868, the Department issued compilations of its correspondence on foreign affairs; and that in 1870, the publication of such correspondence was finally established as a matter of course.

"But, in respect to these several sources of authority, the following remarks may be made:

"(1) In the manuscript records many important papers are omitted. A sudden call from Congress came, for instance, to which a reply was furnished by the Secretary, and this reply was forwarded, as often happened, without being entered, as it should have been, in the 'Report Book,' which is assigned for such papers. But by far the most common cause of omission is the occasional use, by both Presidents and Secretaries, of informal letters, for the purpose of personal explanation of their action and policy. Some of these letters will be found in the published volumes of the works of Mr. Jefferson, Mr. Madison, and Mr. Webster. A far larger portion of them may be found in the unpublished papers of Mr. Jefferson, Mr. Madison, and Mr. Monroe, now deposited in the Department of State. I have drawn, in my present work, largely from both these sources, as well as from the manuscript records.

"(2) The printed documents, whether contained in reports to Congress or in the 'State Papers,' or in the annual publications of the Department, are necessarily defective. This arises not merely because many important documents, or parts of documents, are kept back at the time, from the fact that their publication might not be consistent with public interest, but because expositions of general rules, which are of so great interest in a work such as that in which I am now engaged, are not of equal interest in publications whose object is to report the action of the Government in concrete cases.

"(3) So far as concerns the publications to which I have referred, it must be noticed that not only do they cover only limited sections of time in our political history; not only are they necessarily imperfect in their exposition of the action of the Department even in the periods they cover; not only do they suppress passages, which though of great future interest in settling principles, it may be impolitic at the time to make

public; not only from their voluminousness and lack of system is it a work of much time and skill to find in them rulings pertinent to any particular pending issue; but they are themselves in many important cases unattainable. The earlier publications are out of print. Documents printed by Congress are, from time to time, destroyed in masses by Congressional direction; and in fact, were this not done, the public offices and vaults of Washington would be gorged with documents nine-tenths of which have ceased to be called for and are without interest to any but the antiquarian. But of the serious effects of this destruction, in respect to other documents of immense public interest, I beg to give the following illustrations:

"Mr. Fillmore's second annual message contains an exposition of international law, as applied to our then foreign relations, which is understood to have been furnished by Mr. Webster, and which is one of the most masterly papers which has been produced on the topic with which we are now concerned. Now, the only detached copy of this message to be found in the library of the Department of State is cut out from one of the newspapers of the day; nor is any copy now obtainable from the Congressional records, or, sr far as I can learn, from any private publishing house.

"Mr. Everett, during the short period in which he filled the secretaryship (the period intervening between the death of Mr. Webster and the accession of Mr. Marcy as Secretary in the administration of Mr. Pierce), prepared, aided by notes left by Mr. Webster, instructions on the policy to be adopted towards Cuba by the United States, as affected by the question immediately before him of a proposed joint agreement with European powers of abstention from any future annexation of Cuba. These instructions, signed and issued by Mr. Everett, were afterwards, after grave consideration, adopted by Mr. Marcy. I must here express my opinion that for wisdom and eloquence they are unexcelled by any papers that have ever issued from the State Department; and that they contain an exposition of our true policy as to territorial accretion, which, for its statesmanlike power, its non-partisan broadness of base, as well as for its attractiveness of style, peculiarly fit it to be one of the standards to which political authorities of the future should appeal. Yet of these instructions of Mr. Everett, occupying as they did, when printed, a pamphlet of sixty-four pages, I have been unable, though I have searched most diligently, to obtain a single copy. The edition published in Boston is exhausted, nor is it likely that it would be reprinted by private enterprise.

"Another illustration may be found in Mr. Marcy's various expositions of the Koszta case. One or two of these may still be obtained in antiquarian stores. But that which I regard the ablest, in which he discusses the law of domicil with almost unequaled sagacity and exactness, has never found its way into print.

"We fall back, then, upon the manuscript copies of the Department of State, and we are admonished, by the destruction of some of the earlier volumes at the burning of Washington by the British, as well as by the loss of public documents in other Departments by what are called accidental fires, that in respect to these standards we hang on a line by no means insured from perishing.

"Whether these records should be reprinted as a whole is a question of interest. If they were, they would cover four hundred volumes of the ordinary law-book size. It would be difficult for one seeking in haste to find rulings on some pending question of international law,

to come to an accurate result from the study, in the short time assigned to him, of so vast a mass of authorities.

"I have endeavored to meet this want by the present digest. In seeking for material I have turned every page of the volumes of records in the Department to which I have referred; and I have consulted in connection with them the various publications to be found in the annexed table. From these standards I have copied whatever, in the way of principle, bears on international law; and the extracts I have thus made I have arranged in the form of a digest, placing them chronologically under their respective heads. Of the materials that apply, in the way of principle, to the task before me, I believe I have omitted no passages giving the deliberate opinions of Secretaries from the beginning of the Government to the present day. I am conscious of no party predilections in making these extracts; nor in fact is the topic one on which party predilections could operate. We have been, throughout the country, one in our principles of international law from the foundation of our Government to the present day. If there was an alleged expansion of neutral duty in the late civil war, this was only apparent; and I have to say that no more unqualified assertion of neutral rights is to be found than that contained in Mr. Seward's vindication of his action in the Trent affair. And if sometimes he threw out argumentatively positions inconsistent with those which in other administrations have been part of the settled policy of the Government, these were always afterwards modified by him so as to conform to such policy, and had at least the good effect of bringing to the same common ground the British Government of the day, receding in this respect from the ground taken by its predecessors. A more serious departure from this policy might be claimed to exist in the rulings of the Geneva conference; but it must be remembered that the action of this conference was not the action of the Department of State, which not long after the publication of its adjudication disclaimed, as will hereafter be seen, its binding authority. With the exception of these transient fluctuations of opinion, not worked into the Department as part of its permanent system of law, the action of the Department, no matter what may have been the party character of the administration, has been one of consistent logical progress. There is submission to, and yet not repetition of, the old law laid down by our first administration, as a law which, while distinctively American, has established a jurisprudence for the civilized world. This law is one in its basis, yet, as is the case with all true law whose continued existence depends on its responsiveness to popular conscience and need, adapts itself, in its own instinctive evolution, to the contingencies of each social and political juncture that occurs.

"For the purposes of elucidation, I have concluded, in their appropriate heads in this digest, the decisions of the courts of the United States and of the Attorneys-General on the questions involved.

"I am indebted to John B. Moore, esq., of the Department of State, to whose great aid in other respects I am glad to acknowledge my obligations, for a compilation of the rulings of commissions established by the United States, in connection with other powers, for the settlement of points in international dispute."

On July 28, 1886, the following resolution, adopted by Congress, was approved by the President:

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That there be printed the usual number

of copies of "A Digest of the International Law of the United States, taken from the Opinions of Presidents and Secretaries of State, and of Attorneys-General, and from the Decisions of Federal Courts, and of Joint International Commissions in which the United States was a Party"; and that there be printed in addition to said usual number, one thousand copies for the use of the State Department, one thousand copies for the use of the Senate, and two thousand copies for the use of the House of Representatives; said Digest to be printed under the editorial supervision of Francis Wharton, and the editing to be paid for at a price to be fixed by the chairman of the Committee on Foreign Relations of the Senate, and the chairman of the Committee on Foreign Affairs of the House of Representatives, acting with the Joint Committee on Printing, not to exceed ten thousand dollars.

Immediately after the approval of this resolution I placed in the hands of the Public Printer the digest it calls for, so far as concerns documents emanating from Presidents and Secretaries of State, and opinions of Federals courts and Attorneys-General, with editorial comments on the same.

The digest of the rulings of the international commissions, which I mentioned in the preface above given as undertaken by the Hon. John B. Moore, will occupy a separate volume. Of the importance of such a digest I cannot speak too highly. I have also to repeat my acknowledgement of Mr. Moore's aid as stated above, and of the services rendered by Mr. J. Wilson Bayard, of the Department of State, not merely in the preparation of the work for the press, but in proof reading.

So far as concerns the present volumes, the following observations are to be made:

The authorities on whom I have relied are: (1) Presidents' messages; (2) opinions and reports of Secretaries of State; (3) opinions of Attorneys-General; (4) opinions of Federal courts; (5) papers emanating from the War, Navy, and Interior Departments; (6) unofficial letters of our leading statesmen, of which many of great importance are drawn from the Jefferson, Madison, and Monroe papers on deposit in the Department of State; (7) standard works on international law and history. As to the latter, I have, as a rule, confined myself to quotations from authors not readily accessible in this country. Were I to have quoted from Mr. Wheaton, for instance, all passages pertinent to the topics I had before me, I would have republished the greater part of his invaluable treatises. This for various reasons could not be done. I have freely cited, however, the notes of Mr. Dana and Mr. Lawrence to Mr. Wheaton's work on International Law, and I have made large use of Mr. J. C. Bancroft Davis' comments on treaties published in the volume of treaties issued by the Department of State. I have frequently, also, relied on Sir Sherston Baker's edition of General Halleck's International Law, as well as on the work on international law published by President Woolsey.

The resolution under which I have acted directs that the work should be printed under my "editorial supervision." This I have construed as giving me such editorial control over the material in my hands as would enable me to present it faithfully and effectively to the public eye.

So far as concerns the authoritative documents open to me, my method of treatment has been simple. I have carefully searched all the records of the Department in which are contained its diplomatic correspondence, and the official reports of Secretaries, and I have copied therefrom all passages relative to international law. When these passages were not affirmations of prior rulings, I have entered them in full; when they were such affirmations, I have noted them as such, or I have given specifically the points they decide. The same course I have taken in respect to Presidents' messages relative to international law. Of the opinions of the Attorneys-General and of Federal courts I have generally given only abstracts, considering these to be merely auxiliary to the main object of the work.

In the pamphlet presented by me to Congress in March last, I gave an analysis of the work as projected. This analysis being before the committees of the Senate and House, to whom the matter was referred, and being the basis of their reports recommending publication, has been considered by me as so far approved as to make it my duty to retain it, with such slight modifications as became subsequently requisite.

There will be little difficulty, I apprehend, in mastering the plan of the work, when it is observed that in each successive head of the analysis the material is arranged as follows:

(1) Messages of Presidents and documents emanating from Secretaries of State, in chronological order.

(2) Opinions of Federal courts, in chronological order.

(3) Opinions of Attorneys-General, in chronological order.

When, however, the topic is exclusively of a judicial character, I have placed the opinions of the courts in the front rank.

In order to distinguish rulings of the three classes just mentioned, I have given them in type of long primer leaded.

Unofficial opinions of leading statesmen, and opinions of text-writers, I have placed in the same type, solid, inclosed in quotation marks. In the latter type, not in quotation marks, are given my own editorial comments.

Material of a secondary character, introduced by way of illustration, is placed in brevier.

F. W.

NOVEMBER 20, 1886.

PREFACE TO SECOND EDITION.

The present (second) edition of this work is printed in obedience to the following resolution of Congress, adopted March 3, 1887:

Resolved by the Senate (the House of Representatives concurring), That 4,000 additional copies of Wharton's Digest of International Law be printed and bound; of which 1,000 copies shall be for the use of the Senate, 2,000 copies for the use of the House, and 1,000 copies for the use of the Department of State.

In the preparation of this edition I have corrected a number of errors of the press in the plates, and I have added an appendix, which incorporates the following material:

(1) Diplomatic papers inadvertently omitted in the first edition.

(2) Extracts, relative to the Treaty of Peace of 1782–'83, from the Franklin papers, now on deposit in the Department of State, with notes thereon.

(3) Documents emanating from the Department since the prior edition went to press, and opinions of counsel as to some of the questions therein raised.

F. W.

WASHINGTON, D. C., *July* 7, 1887.

TABLE OF PRESIDENTS AND SECRETARIES OF STATE, WITH THE DATES OF THE COMMENCEMENT OF THE TERMS OF EACH, FROM 1789 TO 1885.

PRESIDENTS.		SECRETARIES OF STATE.	
Name.	Commencement of term.	Name.	Date of appointment.
GEORGE WASHINGTON....	1789, Apr. 30	THOMAS JEFFERSON	1789, Sept. 26
		EDMUND RANDOLPH.....	1794, Jan. 2
		TIMOTHY PICKERING.....	1795, Dec. 10
JOHN ADAMS	1797, Mar. 4	JOHN MARSHALL	1800, May 13
THOMAS JEFFERSON	1801, Mar. 4	JAMES MADISON	1801, Mar. 5
JAMES MADISON	1809, Mar. 4	ROBERT SMITH	1809, Mar. 6
		JAMES MONROE.....	1811, Apr. 2
JAMES MONROE	1817, Mar. 4	JOHN QUINCY ADAMS.....	1817, Mar. 5
JOHN QUINCY ADAMS.....	1825, Mar. 4	HENRY CLAY.....	1825, Mar. 7
ANDREW JACKSON	1829, Mar. 4	MARTIN VAN BUREN	1829, Mar. 6
		EDWARD LIVINGSTON	1831, May 24
		LOUIS MCLANE	1833, May 29
		JOHN FORSYTH.....	1834, June 27
MARTIN VAN BUREN	1837, Mar. 4		
WILLIAM H. HARRISON ...	1841, Mar. 4	DANIEL WEBSTER.....	1841, Mar. 5
JOHN TYLER	1841, Apr. 4	HUGH S. LEGARÉ	1843, May 24
		ABEL P. UPSHUR.....	1843, July 24
		JOHN NELSON	1844, Feb. 29
		JOHN C. CALHOUN.....	1844, Mar. 6
JAMES K. POLK.....	1845, Mar. 4	JAMES BUCHANAN.....	1845, Mar. 6
ZACHARY TAYLOR.....	1849, Mar. 4	JOHN M. CLAYTON.....	1849, Mar. 7
MILLARD FILLMORE.....	1850, July 10	DANIEL WEBSTER	1850, July 22
		EDWARD EVERETT.....	1852, Nov. 26
FRANKLIN PIERCE.....	1853, Mar. 4	WILLIAM L. MARCY	1853, Mar. 7
JAMES BUCHANAN	1857, Mar. 4	LEWIS CASS.....	1857, Mar. 6
		JEREMIAH S. BLACK	1860, Dec. 17
ABRAHAM LINCOLN	1861, Mar. 4	WILLIAM H. SEWARD	1861, Mar. 5
ANDREW JOHNSON.....	1865, Apr. 15		
ULYSSES S. GRANT.....	1869, Mar. 4	ELIHU B. WASHBURNE....	1869, Mar. 5
		HAMILTON FISH	1869, Mar. 11
RUTHERFORD B. HAYES ..	1877, Mar. 4	WILLIAM M. EVARTS.....	1877, Mar. 12
JAMES A. GARFIELD	1881, Mar. 4	JAMES G. BLAINE.....	1881, Mar. 5
CHESTER A. ARTHUR.....	1881, Sept. 19	FREDERICK T. FRELINGHUYSEN.	1881, Dec. 12
GROVER CLEVELAND	1885, Mar. 4	THOMAS F. BAYARD	1885, Mar. 6

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I. *TERRITORIAL SOVEREIGN SUPREME.*

§ 1.

The authority of a nation within its own territory is absolute and exclusive.

Church *v.* Hubbart, 2 Cranch, 187, 234. (See more fully *infra*, § 9.)

Any restriction upon this sovereignty, when such restriction comes from a foreign power, implies a transfer *pro tanto* of such sovereignty

to such power. "This full and absolute territorial jurisdiction being alike the attribute of every sovereign, and being incapable of conferring extraterritorial power, would not seem to contemplate foreign sovereigns nor their sovereign rights as its objects. One sovereign being in no respect amenable to another, and being bound by obligations of the highest character not to degrade the dignity of his nation by placing himself or its sovereign rights within the jurisdiction of another, can be supposed to enter a foreign territory only under an express license, or in the confidence that the immunities belonging to his independent sovereign station, though not expressly stipulated, are reserved by implication, and will be extended to him."

Marshall, C. J. Schooner Exchange *v.* McFaddon, 7 Cranch, 137. (See *infra*, § 17*a*.)

A foreign power cannot of right institute or erect any court of judicature of any kind, within the jurisdiction of the United States, but such only as may be warranted by and be in pursuance of treaties. Hence the admiralty jurisdiction, which has been exercised in the United States by consuls of France, not being so warranted, is not of right.

Glass *v.* Sloop Betsey, 3 Dallas, 6.

A seizure for the breach of the municipal laws of one nation cannot be made within the territory of another.

The Apollon, 9 Wheaton, 362.

It belongs to sovereignties to fix boundaries between their respective jurisdictions; and when fixed by compact, they become conclusive upon their citizens and bind their rights.

Poole *v.* Fleeger, 11 Peters, 185. (See *infra*, §§ 9, 11*a*.)

The doctrine of the unity of sovereignty within specific territorial bounds, and of homogeneousness of institutions and laws within those bounds, is of comparatively recent origin. At the breaking up of the Roman Empire, when, within the territory formerly dominated by Rome, distinct nationalities, with distinct usages and laws, were introduced, it was not attempted to extend over races so diverse, and with such strongly variant traditions, a jurisprudence which would apply equally to all dwelling within the same territorial limits. Hence, while the invading nations who settled within the old Roman boundaries retained each their own usages and laws, there was no attempt to break down the usages and laws by which the Romans were personally governed. From this sprang up the system of what is called "personal" law; *i. e.*, law which derives its character not from locality, but from race. In modern Europe "personal" law has been almost entirely superseded by "territorial" law; *i. e.*, law imposed by the sovereign of the territory upon all who occupy it. Few exceptions are now recognized in Europe. The chief of these are those which in certain countries impose disabilities on Jews. (*Infra*, § 55.) In the United States we have a remarkable exception, as will hereafter be more fully seen, in the Indian race (see *infra*, § 208). The members of that race, when dispersed in the general population, are governed, as are the persons about them, by "territorial" law; *i. e.*, the law of the land which they occupy. When, however, they are collected in tribal reservations, they are governed, at least in part,

by the law of their tribe. With this exception, all persons resident in the United States are equally subject to the law of the particular part of the country in which they reside. But this "territorial" law is itself modified by the following conditions:

(1) Persons who, though residing on our soil, are domiciled in another country, are subject, so far as concerns personal taxation, legitimacy, and the distribution of their personal property after death, to the law of their domicile, and not to the law of their temporary residence. Domicile, not temporary residence, also determines the jurisdiction of divorce proceedings. (*Inf.*, § 260 *ff.*)

(2) The law that determines the mode of solemnizing marriage is that of the place of solemnization. (*Inf.*, § 260 *ff.*)

(3) "Territorial" sovereignty, while absolute, so as to exclude, except by its own permission, foreign jurisprudences, so far from excluding a distribution of power, primarily in the people, and secondarily in several gradually ascending or co-ordinate departments of government, is in all modern civilized countries so distributed. This is eminently so in the United States. (*Infra*, § 11.)

On the general question of "territorial" as distinguished from "personal" law may be consulted Maine's Ancient Law, Whart. Conf. of Laws, §§ 7, 8, 9, 84 *ff.*

That all sovereigns are to be treated as equals, see Mr. Bayard, Sec. of State, report, etc., quoted App., Vol. III, § 61.

II. *DISCOVERY THE BASIS OF TITLE.*

§ 2.

[This topic in reference to transmission of Indian titles, is discussed *infra* § 209; as to guano islands, *infra* § 310.]

"On the discovery of this immense continent the great nations of Europe were eager to appropriate to themselves so much of it as they could respectively acquire. * * * But, as they were all in pursuit of nearly the same object, it was necessary, in order to avoid conflicting settlements, and consequent war with each other, to establish a principle which all should acknowledge as the law by which the right of acquisition, which they all asserted, should be regulated as between themselves. This principle was, that discovery gave title to the Government by whose subjects or by whose authority it was made against all other European Governments, which title might be consummated by possession. The exclusion of all other Europeans necessarily gave to the nation making the discovery the sole right of acquiring the soil from the natives, and establishing settlements upon it. It was a right with which no European could interfere. It was a right which all asserted for themselves, and to the assertion of which by others all assented. * * * While the different nations of Europe respected the right of the natives as occupants, they asserted the ultimate dominion to be in themselves, and claimed and exercised as a consequence of this ultimate dominion a power to grant the soil while yet in possession of the natives. These grants have been understood by all to convey a title to the grantees, subject only to the Indian right of occupancy."

Marshall, C. J., Johnson *v.* McIntosh, *8 Wheat.*, 572 *ff.*

The title to the land in the English-settled colonies in this country has "been granted by the Crown while in the occupation of the Indians. These grants purport to convey the soil as well as the right of dominion to the grantees." * * * "The magnificent purchase of Louisiana was the purchase from France of a country almost entirely occupied by numerous tribes of Indians who are, in fact, independent. Yet, any attempt of others to intrude into that country would be considered as an aggression which would justify war. Our late acquisitions from Spain are of the same character; and the negotiations which preceded those acquisitions recognize and elucidate the principle which has been received as the foundation of all European title in America. The United States, then, have unequivocally acceded to the great and broad rule by which its civilized inhabitants now hold this country. They hold and assert in themselves the title by which it was acquired. They maintain, as all others have maintained, that discovery gave an exclusive right to extinguish the Indian title of occupancy, either by purchase or by conquest; and gave also a right to such a degree of sovereignty as the circumstances of the people would allow them to exercise." Hence a conveyance of title to lands exclusively derived from an Indian tribe northwest of the Ohio in 1773 and 1775 to private persons conveys no title.

Marshall, C.J., Johnson *v.* McIntosh, 8 Wheat., 543, 579, 587.

The rights of the original inhabitants were not entirely disregarded, but were necessarily, to a considerable extent, impaired. These inhabitants were admitted to be the occupants of the soil; but their rights to complete sovereignty, as independent nations, were necessarily diminished, and their power to dispose of the soil at their own will was denied by the original fundamental principle that discovery gave exclusive title to those who made it.

Johnson *v.* McIntosh, 8 Wheat., 543.

So far as respects the Crown to whose authority the States succeeded, no distinction was taken between vacant lands and lands occupied by the Indians. The title, subject only to the right of occupancy by the Indians, was admitted to be in the King, and he could grant the lands away, or reserve them for the Indians.

Ibid.: see United States *v.* Fernandez, 10 Peters, 303.
(See *infra* 209.)

The English possessions in America were not claimed by right of conquest, but of discovery, and were held by the King, as the representative of the nation, for whose benefit the discovery was made. When the revolution took place, the people of each State, in their sovereign character, acquired the absolute right to all their navigable waters, and the soil with them.

The grant from Charles II to the Duke of York, of the territory which

now forms the State of New Jersey, passed to the Duke the soil under the navigable waters as one of the royalties incident to the powers of government, which were also granted, to be held by him in the same manner and for the same purposes as this soil had been previously held by the Crown, and the same is true of the grantees of the Duke. And when these grantees surrendered to the Crown all the powers of government, the title to the soil passed to the Crown, and at the Revolution became vested in the State of New Jersey.

Martin v. Waddell, 16 Peters, 367.

"How far the mere discovery of a territory which is either unsettled, or settled only by savages, gives a right to it, is a question which neither the law nor the usages of nations has yet definitely settled. The opinions of mankind, upon this point, have undergone very great changes with the progress of knowledge and civilization. Yet it will scarcely be denied that rights acquired by the general consent of civilized nations, even under the erroneous views of an unenlightened age, are protected against the changes of opinion resulting merely from the more liberal, or the more just, views of after times. The right of nations to countries discovered in the sixteenth century is to be determined by the law of nations as understood *at that time*, and not by the improved and more enlightened opinion of three centuries later."

Mr. Upshur, Sec. of State, to Mr. Everett, Oct. 9, 1843. MSS. Instruc. Great Britain.

"The ground taken by the British Government, that a discovery made by a private individual, in the prosecution of a private enterprise, gives no right, cannot be allowed. There is nothing to support it, either in the reason of the case or in the law and usage of nations. To say the least of it, if a discovery so made confers no right, it prevents any other nation from acquiring a right by subsequent discovery, although made under the authority of Government, and with an express view to that object. In no just acceptation of the term can a country be said to be 'discovered,' if its existence has been previously ascertained by actual sight. This is a mere question of *fact*, which a private person can settle as well as a public agent. But be this as it may, Meares himself was but the agent of a private trading company, without any authority whatever from his Government, so that, in this respect, his discovery stands upon no better ground than that of Captain Gray."

Ibid.

"Now, mere lapse of time, independent of legislation or positive agreement, cannot of itself either give or destroy title. It gives title only so far as it creates a presumption, equivalent to proof, that a title exists, derived from higher sources: it *destroys* title only because it creates a like presumption that, whatever the title may have been, it has been transferred or abandoned. Thus it is merely evidence and

nothing more. It creates a *presumption* equivalent to full proof. But it differs from proof in this, that proof is *conclusive* and final, whereas presumption is conclusive only until it is met by counter-proof, or a stronger counter-presumption."

Ibid.

"That continuity furnishes a just foundation for a claim of territory, in connection with those of discovery and occupation, would seem unquestionable. It is admitted by all, that neither of them is limited by the precise spot discovered or occupied. It is evident that, in order to make either available, it must extend at least some distance beyond that actually discovered or occupied; but how far, as an abstract question, is a matter of uncertainty. It is subject, in each case, to be influenced by a variety of considerations. In the case of an island, it has been usually maintained in practice, to extend the claim of discovery or occupancy to the whole; so likewise in the case of a river, it has been usual to extend them to the entire region drained by it, more especially in cases of a discovery and settlement at the mouth; and emphatically so when accompanied by exploration of the river and region through which it flows. Such, it is believed, may be affirmed to be the opinion and practice, in such cases, since the discovery of this continent. How far the claim of continuity may extend in other cases, is less perfectly defined, and can be settled only by reference to the circumstances attending each. When this continent was first discovered, Spain claimed the whole, in virtue of the grant of the Pope; but a claim so extravagant and unreasonable was not acquiesced in by other countries, and could not be long maintained. Other nations, especially England and France, at an early period contested her claim. They fitted out voyages of discovery, and made settlements on the eastern coast of North America. They claimed for their settlements, usually, specific limits along the coasts or bays on which they were founded; and, generally, a region of corresponding width extending across the entire continent to the Pacific Ocean. Such was the character of the limits assigned by England in the charter which she granted to her former colonies, now the United States, when there were no special reasons for varying from it. How strong she regarded her claim to the region conveyed by these charters and extending westward of her settlements, the war between her and France, which was terminated by the treaty of Paris, in 1763, furnishes a striking illustration. That great contest, which ended so gloriously for England, and effected so great and durable a change on this continent, commenced in a conflict between her claims and those of France, resting, on her side, on this very right of continuity, extending westward from her settlements to the Pacific Ocean; and, on the part of France, on the same right, but extending to the region drained by the Mississippi and its waters, on the ground of settlement and exploration. Their respective claims, which led to

the war, first clashed on the river Ohio, the waters of which the colonial charters, in their western extension, covered; but which France had been unquestionably the first to settle and explore. If the relative strength of these different claims may be tested by the result of that remarkable contest, that of continuity westward must be pronounced to be the stronger of the two. England has had at least the advantage of the result, and would seem to be foreclosed against contesting the principle, particularly as against us, who contributed so much to that result, and on whom that contest and her example and pretensions, from the first settlement of our country, have contributed to impress it so deeply and indelibly. But the treaty of 1763, which terminated that memorable and eventful struggle, yielded, as has been stated, the claim and all the chartered rights of the colonies beyond the Mississippi. The seventh article establishes that river as the permanent boundary between the possessions of Great Britain and France on this continent." This treaty, Mr. Calhoun proceeded to argue, transferred to France the title of Great Britain to the country west of the Mississippi, which title passed from France to the United States by the treaty ceding Louisiana. Mr. Calhoun then maintained that Spain's title to the region west of the Rocky Mountains, based on discovery, was transferred to the United States, by cession from Spain to France, and then from France to the United States.

Mr. Calhoun, Sec. of State, to Mr. Pakenham, September 3, 1844, MSS. Notes. Great Britain; 5 Calhoun's Works, 432.

"Discovery alone is not enough to give dominion and jurisdiction to the sovereign or government of the nation to which the discoverer belongs; such discovery must be followed by possession. 'All mankind,' says that eminent and impartial writer on international law, Vattel, 'have an equal right to things that have not yet fallen into the possession of any one, and those things belong to the person who first takes possession of them. When, therefore, a nation finds a country uninhabited and without an owner, it may lawfully take possession of it; and after it has sufficiently made known its will in this respect, it cannot be deprived of it by another nation.' 'Thus,' continues the learned author, 'navigators going on voyages of discovery, furnished with a commission from their sovereign, and meeting with islands or other lands in a desert state, have taken possession of them in the name of their nation, and this title has been usually respected, provided it was soon after followed by a real possession.' (Vattel, Ch. XVIII, page 98, Philadelphia edition, 1849.)"

Mr. Fish, Sec. of State, to Mr. Preston, Dec. 31, 1872. MSS. Notes Hayti.

"The fact that the discoveries of an American citizen first revealed the importance of the Congo country seems to justify this Government in claiming a special influence upon the determination of the questions

touching all foreign arrangements for the administration of that region, especially as to its commerce."

Mr. Frelinghuysen, Sec. of State, Let. to Mr. Chandler, Nov. 22, 1884, MSS. Dom. Let. Cf. App., Vol. III, § 2.

See further as to Congo and other explorations, *infra*, § 51.

As to territoriality of rivers, see *infra*, § 30.

As to title to derelict or unappropriated guano islands, based on discovery, see *infra*, § 310.

As to title of island to San Juan, Puget Sound, on the northwestern coast, see Mr. Cass, Sec. of State, to Lord Lyons, October 22, 1859, MSS. Notes, Great Britain; as to temporary joint occupancy of same island, see Mr. Trescot, Acting Sec. of State, to Mr. Irvine, August 18, 1860, *Id.*; House Ex. Doc. No. 77, Thirty-sixth Congress, first session; Senate Ex. Doc. No. 10, Thirty-sixth Congress, first session; Senate Ex. Doc. No. 29, Fortieth Congress, second session. See also 50 Brit. and For. State Papers, 1859–'60, p. 796.

A "Memoir, Historical and Political, on the Northwest Coast of North America and its adjacent territories, illustrated by a map, &c., by Robert Greenhow, translator and librarian to the Department of State," 228 pages, is given in Senate Document No. 174, Twenty-sixth Congress, first session.

As to title of Key Verd Island, latitude 22° 15′ north, longitude 75° 10′ west from Greenwich, see Senate Reports of Committees No. 280, Thirty-sixth Congress, first session.

III. *CONQUERED TERRITORY SUBJECT TO TEMPORARY MILITARY CONTROL.*

§ 3.

By the conquest and military occupation of a portion of the territory of the United States by a public enemy, that portion is to be deemed a foreign country so far as respects our revenue laws.

U. S. *v.* Rice, 4 Wheat., 246.

The holding of a conquered territory is regarded as a mere military occupation until its fate shall be determined at the treaty of peace. If it be ceded by the treaty, the acquisition is confirmed, and the ceded territory becomes a part of the nation to which it is annexed, either on the terms stipulated in the treaty of cession, or on such as its new master shall impose. On such a transfer of territory it has never been held that the relations of the inhabitants with each other undergo any change. Their relations with their former sovereign are dissolved, and new relations are created between them and the Government which has acquired their territory. The same act which transfers their country transfers the allegiance of those who remain in it; and the law, which may be denominated political, is necessarily changed, although that which regulates the intercourse and general conduct of individuals remains in force until altered by the newly-created power of the state.

American Insurance Co. *v.* Canter, 1 Peters, 511. See *infra* §§ 187–8.

By the conquest and military occupation of Castine by the British on September 1, 1814, that territory passed under the temporary allegiance

and sovereignty of the enemy. The sovereignty of the United States over the territory was suspended during such occupation, so that the laws of the United States could not be rightfully enforced there, or be obligatory upon the inhabitants who remained and submitted to the conquerors. But, on the other hand, a territory conquered by an enemy is not to be considered as incorporated into the dominions of that enemy, without a renunciation in a treaty of peace, or a long and permanent possession. Until such incorporation, it is still entitled to the full benefit of the law of postliminy.

U. S. v. Hayward, 2 Gall., 485.

The capture and occupation of Tampico, by the arms of the United States, during the war with Mexico, though sufficient to cause it to be regarded by other nations as part or our territory, did not make it a part of the United States under our constitution and laws; it remained a foreign country within the meaning of the revenue laws of the United States.

Fleming v. Page, 9 Howard, 603.

The port of San Francisco was conquered by the United States as early as 1846. "Shortly afterward, the United States had military possession of all of Upper California. Early in 1847, the President, as constitutional Commander-in-Chief of the Army and Navy, authorized the military and naval commander of our forces in California to exercise the belligerent rights of a conqueror, and to form a civil government for the conquered country, and to impose duties on imports and tonnage as military contributions for the support of the Government and of the army which had the conquest in possession. * * * No one can doubt that these orders of the President, and the action of our Army and Navy commander in conformity with them, were according to the law of arms and the right of conquest, or that they were operative until the ratification and exchange of a treaty of peace. Such would be the case by the law of nations in respect to war and peace between nations. In this instance it is recognized by the treaty itself."

Cross v. Harrison, 16 Howard, 190.

The powers of such military courts do not necessarily terminate with cessation of hostilities, if the conquering power retains the sovereignty of the conquered territory; and suits pending in such courts may, on the organization of civil government, be transferred by statute to the new courts so organized.

Leitensdorfer v. Webb, 20 Howard, 176.

The proclamation of General Butler at New Orleans, dated the 1st and published on the 6th of May, 1862, announcing that "all rights of property" would be held "inviolate, subject only to the laws of the United States"; and that "all foreigners not naturalized, claiming allegiance to their respective governments, and not having made oath of

allegiance to the government of the Confederate States," would be "protected in their persons and property as heretofore under the laws of the United States," did but reiterate the rules established by the legislative and executive action of the National Government; and vessels and cargoes belonging to citizens of New Orleans, or neutrals residing there, and not affected by any attempts to run the blockade, or by any act of hostility against the United States, were protected by that proclamation, though such persons, by being identified with the enemy by long voluntary residence and business relations, may have been "enemies" within the meaning of the expression as used in public law.

The Venice, 2 Wallace, 258.

A conqueror has a right to displace the pre-existing authority and to assume, to such extent as he may deem proper, the exercise by himself of all powers and functions of government. He may appoint all the necessary officers and clothe them with designated powers, larger or smaller, according to his pleasure, and he may prescribe the revenues to be paid, and apply them to his own use or otherwise. There is no limit to the powers that may be exerted in such cases, save those which are found in the laws and usages of war, as settled by the law of nations.

New Orleans *v.* Steamship Company, 20 Wallace, 387.

This subject, in reference to the invader's right to property seized by him, is discussed *infra*, §§ 338 *ff.*

"By the law of nations a conquered territory is subject to be governed by the conqueror during his military possession, and until there is either a treaty of peace, or he shall voluntarily withdraw from it. The old civil government being necessarily superseded, it is the right and duty of the conqueror to secure his conquest, and to provide for the maintenance of civil order and the rights of the inhabitants. This right has been exercised and this duty performed by our military and naval commanders, by the establishment of temporary governments in some of the conquered provinces in Mexico, assimilating them as far as practicable to the free institutions of our own country. In the provinces of New Mexico, and of the Californias, little if any further resistance is apprehended from the inhabitants to the temporary governments which have thus, from the necessity of the case and according to the laws of war, been established. It may be proper to provide for the security of these important conquests by making an adequate appropriation for purpose of erecting fortifications and defraying the expenses necessarily incident to the maintenance of our possession and authority over them."

President Polk's second annual message, 1846. See *infra* §§ 353, *ff.*

"In prosecuting a foreign war thus duly declared by Congress, we have the right, by conquest and military occupation, to acquire posses-

sion of the territories of the enemy, and, during the war, to exercise the fullest rights of sovereignty over it. The sovereignty of the enemy is in such case 'suspended,' and his laws can 'no longer be rightfully enforced' over the conquered territory, 'or be obligatory upon the inhabitants who remain and submit to the conqueror. By the surrender the inhabitants pass under a temporary allegiance' to the conqueror, and are 'bound by such laws, and such only, as' he may choose to recognize and impose. 'From the nature of the case, no other laws could be obligatory upon them; for where there is no protection, or allegiance, or sovereignty, there can be no claim to obedience.' These are well-established principles of the laws of war, as recognized and practised by civilized nations; and they have been sanctioned by the highest judicial tribunal of our own country."

President Polk's special message, July 24, 1848.

The conqueror possesses the right to prescribe the limitations of his conquest and the terms and conditions of peace.

2 Op., 321, Berrien, 1830.

The conquest of a country, or a portion of a country, by a public enemy entitles such enemy to the sovereignty as far as his conquest extends, and gives him dominion as long as he retains his military possession.

9 Op., 140, Black, 1858.

The inhabitants who remain and submit, and strangers who go there during the occupation, must take the law from the ruler *de facto*, and not from the government *de jure*, which has been expelled; and when the former government resumes possession, whether by force or by treaty, it cannot call the citizens or subjects of a third nation to account for obeying the authority which was temporarily supreme.

Ibid. As to effect of cessation of hostilities, see *infra*, § 355. As to *de facto* governments, see *infra*, § 7.

IV. *CONQUERED, ANNEXED, OR DIVIDED TERRITORY RETAINS ITS PRIOR MUNICIPAL INSTITUTIONS.*

§ 4.

A mere change of sovereignty does not produce any change in private rights of property in the soil, whether the interest was acquired by law under a grant from the State or by individual contract.

Mutual Assurance Society *v.* Watts, 1 Wheat., 279. App., Vol. III, § 4.

Had Florida changed its sovereign by an act containing no stipulation respecting the property of individuals, the right of property in all those who became subjects or citizens of the new government would have been unaffected by the change.

U. S. *v.* Percheman, 7 Peters, 51.

The second article of the treaty between the United States and Spain, of February 22, 1819, by which His Catholic Majesty ceded to the United States, in full property and sovereignty, all the territories, &c., did not operate to affect the titles of individuals to portions of the ceded territory. The provision in the eighth article for the confirmation of all grants made before a certain time "by His Catholic Majesty or his lawful authorities," &c., did not enlarge the cession; and under it grants made by a governor, generally authorized to grant lands, are not only *prima facie* valid, but binding until disavowed, even if there was power in the Crown to disavow it.

United States *v.* Clarke, 8 Peters, 436.

But an order of survey made by the governor after January 24, 1819, was void under the treaty.

Ibid. Supra, § 5*a*.

The sovereign who acquires an inhabited territory acquires full dominion over it, but this dominion does not divest the vested rights of individuals to property.

Delassus *v.* United States, 9 Peters, 117; Mitchel *v.* United States, *ibid.*, 711; U. S. *v.* Percheman, 7 *ibid.*, 51.

By the law of nations the rights and property of the inhabitants are protected, even in the case of a conquered country, and held sacred and inviolable when it is ceded by treaty, with or without any stipulation to such effect; and the laws, whether in writing or evidenced by the usage and customs of the conquered or ceded country, continue in force till altered by the new sovereign.

Strother *v.* Lucas, 12 Peters, 410.

Every nation acquiring territory, by treaty or otherwise, must hold it subject to the constitution and laws of its own government, and not according to those of the government ceding it.

Pollard's Lessee *v.* Hagan, 3 Howard, 212.

The rights and powers of sovereignty of a nation over its territory cease on the transfer of that sovereignty to another government by a cession of the territory. The power to preserve peace and order may remain in the officers previously appointed by the ceding state until the actual presence of the agents of the succeeding government, but this does not imply that sovereign power remains in the former nation.

U. S. *v.* Reynes, 9 Howard, 127; Davis *v.* Concordia, *id.*, 280; U. S. *v.* D'Auterive, 10 Howard, 609; Montault *v.* U. S., 12 *id.*, 47.

It is true that in a treaty for the cession of territory, its national character continues for all commercial purposes, but full sovereignty for the exercise of it does not pass to the nation to which it is transferred until actual delivery. But it is also true that the exercise of sovereignty by the ceding country ceases, except for strictly municipal

purposes, especially for granting lands. And for the same reason in both cases, because after the treaty is made there is not in either the union of possession and the right to the territory which must concur to give *plenum dominium et utile.* To give that there must be the *jus in rem* and the *jus in re*, or what is called in the common law of England the *juris et seisinae conjunctio.*

Davis *v.* Concordia, 9 Howard, 280. *Infra*, § 5*a*.

When Florida was ceded to the United States and possession of it had actually been taken it was held by the Secretary of the Treasury, whose opinion was sanctioned by the Attorney-General, that, under our revenue laws, its ports must be regarded as foreign until they were established as domestic by an act of Congress.

Fleming *v.* Page, 9 Howard, 603.

In cases of conquest, among civilized countries, having established laws of property, the rule is that laws, usages, and municipal regulations in force at the time of the conquest remain in force until changed by the new sovereign.

U. S. *v.* Power's heirs, 11 Howard, 570; U. S. *v.* Heirs of Rillieux, 14 *id.*, 189.

Spanish laws prevailing in Louisiana before its cession, and affecting titles to lands there, must be judicially noticed by the court. Their existence is not matter of fact to be tried by a jury.

U. S. *v.* Turner, 11 Howard, 663.

The mere fact that a territory has been ceded by one sovereignty to another does not open it to a free commercial intercourse with the world as a matter of course until the new possessor has prescribed by legislation some terms upon which intercourse may be conducted.

Cross *v.* Harrison, 16 Howard, 164.

The general principle is undisputed that the division of an empire works no forfeiture of a right of property previously acquired.

Jones *v.* McMasters, 20 Howard, 8.

When New Mexico was conquered by the United States, it was only the allegiance of the people that was changed; their relation to each other and their rights of property remained undisturbed.

Leitensdorfer *et al.* *v.* Webb, 20 Howard, 176.

The courts of the United States, in passing upon the rights of the inhabitants of California to the property they claim under grants from the Spanish and Mexican governments, must be governed by the stipulations of the treaty, the law of nations, the laws, usages, and customs of the former government, the principles of equity, and the decisions of the Supreme Court, so far as they are applicable.

U. S. *v.* Auguisola, 1 Wallace, 352.

As to Mexican titles, see *infra* § 58.

As to treaty stipulations with Spain, see *infra* § 161.

The cession of California to the United States did not impair the rights of private property. Those rights are consecrated by the law of nations and protected by the treaty of Guadalupe-Hidalgo.

U. S. *v.* Moreno, 1 Wallace, 400.
As to treaty of Guadalupe-Hidalgo, see *infra* § 154.

After conquest such of the habitants as do not remain and become citizens of the victorious sovereign, but, on the contrary, adhere to their old allegiance and continue in the service of the vanquished sovereign, deprive themselves of protection or security to their property, except so far as it may be secured by treaty. Hence, where, on such a conquest, a treaty provided that the former inhabitants who wished to adhere in allegiance to their vanquished sovereign might sell their property, provided they sold it to a certain class of persons and within a time named, the property, if not so sold, became abandoned to the conqueror.

U. S. *v.* Repentigny, 5 Wallace, 211.
As to naturalization by territorial change, see *infra* § 187.

The treaty of Guadalupe-Hidalgo, between the United States and Mexico, did not divest the pueblo, existing at the site of the city of San Francisco, of any rights of property, or alter the character of the interests it may have held in any lands under the former government. It makes no distinction in the protection it provides between the property of individuals and that held by towns under the Mexican Government.

Townsend *v.* Greeley, 5 Wallace, 326. See *infra*, § 152.

By the law of nations a change of government does not affect pre-existing rights of property.

U. S. *v.* Roselius *et al.*, 15 Howard, 36; Strother *v.* Lucas, 12 Peters, 412; Dent *v.* Emmeger, 14 Wallace, 308.

This rule does not extend to mere inchoate rights of property, such as are of imperfect obligation and affect only the conscience of the new sovereign.

Dent *v.* Emmeger, 14 Wallace, 308.

Titles which were perfect before the cession of Louisiana to the United States continued so afterwards, and were in no wise affected by the change of sovereignty. The treaty so provided, and such would have been the effect of the principles of the law of nations if the treaty had contained no provision on the subject.

United States *v.* Roselius, 15 Howard, 31; Strother *v.* Lucas, 12 Peters, 412; Dent *v.* Emmeger, 14 Wallace, 308.
(As to operation of treaties annexing Louisiana, see *infra*, § 148; annexing Florida, *infra*, § 161; annexing California and New Mexico, *infra*, § 154.)

After the surrender of New Orleans to General Butler, and the issuing of his proclamation of May 1, 1862, declaring that "all rights of property of whatever kind will be held inviolate, subject only to the

laws of the United States," private property in the district under his command was not subject to military seizure as booty of war, though not exempt from confiscation under the acts of Congress as enemies' property, if in truth it was such.

Planters' Bank *v.* Union Bank, 16 Wallace, 483.

The division of a country and the maintenance of independent governments over its different parts do not of themselves divest the rights which the citizens of either have to property situate within the territory of the other.

Airhart *v.* Massieu, 98 U. S., 491.

A Mexican was not, by the revolution which resulted in the independence of Texas, or by her constitution of March 17, 1836, or her laws subsequently enacted, divested of his title to lands in that State, but he retained the right to alienate and transmit them to his heirs, and the latter are entitled to sue for and recover them.

Ibid.

As to annexation of Texas, see *infra*, §§ 72, 154.

The general principle that when political jurisdiction and legislative power over a territory are transferred from one sovereign to another, the municipal laws of the territory continue in force until abrogated by the new sovereign, is applicable as to territory owned by the United States, the exclusive jurisdiction of which is ceded to them by a State in a manner not provided for by the Constitution, to so much thereof as is not used by the United States for its forts, buildings, and other needful purposes.

Chicago and Pacific Railway Co. *v.* McGlinn, 114 U. S., 542.

The State of Kansas ceded to the United States exclusive jurisdiction over the Fort Leavenworth Military Reservation within that State, then and previously the property of the United States. At the time of the cession a State law was in force in Kansas requiring railroad companies whose road was not inclosed by a lawful fence, to pay to the owners of all animals killed or wounded by the engines or cars of the companies the full value of the animals killed and the full damage to those wounded, whether the killing or wounding was caused by negligence or not. It was ruled in the Supreme Court that this act remained in force in the reservation after the cession.

Ibid.

"I understand the decision of the Supreme Court of the United States in the case of *Harrison* v. *Cross* (16 Howard, 164–202) to declare its opinion that upon the addition to the United States of new territory by conquest and cession, the acts regulating foreign commerce attach to and take effect within such territory *ipso facto*, and without any fresh act of legislation expressly giving such extension to the pre-existing laws. I can see no reason for a discrimination in this respect between acts

regulating foreign commerce and the laws regulating intercourse with the Indian tribes. There is, indeed, a strong analogy in the two subjects. The Indians, if not foreigners, are not citizens, and their tribes have the character of dependent nations under the protection of this Government. As Chief-Justice Marshall remarks, delivering the opinion of the Supreme Court in *Worcester* v. *The State of Georgia* (6 Peters, 557) 'the treaties and laws of the United States contemplate the Indian territory as completely separated from that of the States, and provide that all intercourse with them shall be carried on exclusively by the Government of the Union.'

"The same clause of the Constitution invests Congress with power to regulate commerce with foreign nations * * * and with the Indian tribes.'

"The act of June 30, 1834 (4 Stat., 729), defines the 'Indian country' as, in fact, 'all that part of the United States west of the Mississippi and not within the States of Missouri and Louisiana, or the Territory of Arkansas.' This, by a happy elasticity of expression, widening as our domain widens, includes the territory ceded by Russia."

Mr. Seward, Sec. of State, to Mr. Schofield, Jan. 30, 1869, MSS. Dom. Let.
For an elaborate discussion of Spanish titles in West Florida, see report of Mr. Livingston, Sec. of State, to President Jackson, June 12, 1832, MSS. Report book Dep. of State.

"But the decision now made rests on an alleged rule of international law which, assumed, as it now is, by the Government of Chili, becomes a proper matter of discussion between ourselves and that Government. It is asserted by the Government of Chili (for, in international relations, and the maintenance of international duties, the action of the judiciary in Chili is to be treated, when assumed by the Government, as the act of the Government) that a sovereign, when occupying a conquered territory, has, by international law, the right to test titles acquired under his predecessor by applying to them his own municipal law, and not the municipal law of his predecessor under which they vested. The true principle, however, is expressed in the following passage cited in the memorialist's brief:

"'But the right of conquest cannot affect the property of private persons; war being only a relation of state to state, it follows that one of the belligerents who makes conquests in the territory of the other cannot acquire more rights than the one for whom he is substituted; and that thus, as the invaded or conquered state did not possess any right over private property, so also the invader or conqueror cannot legitimately exercise any right over that property. Such is to-day the public law of Europe, whose nations have corrected the barbarism of ancient practices which place private as well as public property under military law.' [C. Massé, Rapports du droit des gens avec le droit civil. Vol. I, p. 123, § 148–149.]

"This doctrine has frequently been acted on in the United States. Thus it has been held by the Supreme Court that when New Mexico was conquered by the United States, it was only the allegiance of the people that was changed; their relation to each other, and their rights of property remained undisturbed. [Leitensdorfer *v.* Webb, 20 How., 176.]

"The same has been held as to California. The rights acquired under the prior Mexican and Spanish law, so it was decided, were 'consecrated by the law of nations.' [U. S. *v.* Moreno, 1 Wall., 400. See U. S. *v.* Anguisola, 1 Wall., 352; Townsend *v.* Greeley, 5 Wall., 326; Dent *v.* Emmeger, 14 Wall., 308; Airhart *v.* Massieu, 98 U. S., 491; Mutual Assurance Society *v.* Watts, 1 Wheat, 279; Delassus *v.* U. S., 9 Peters, 117; Mitchel *v.* U. S., 9 Peters, 711; U. S. *v.* Repentigny, 5 Wall., 211.]

"The Government of the United States, therefore, holds that titles derived from a duly constituted prior foreign Government to which it has succeeded are 'consecrated by the law of nations' even as against titles claimed under its own subsequent laws. The rights of a resident neutral—having become fixed and vested by the law of the country—cannot be denied or injuriously affected by a change in the sovereignty or public control of that country by transfer to another Government. His remedies may be affected by the change of sovereignty, but his *rights* at the time of the change must be measured and determined by the law under which he acquired them. * * * The Government of the United States is therefore prepared to insist on the continued validity of such titles, as held by citizens of the United States, when attacked by foreign Governments succeeding that by which they [were] granted. Title to land and landed improvements, is, by the law of nations, a continuous right, not subject to be divested by any retroactive legislation of new Governments taking the place of that by which such title was lawfully granted. Of course it is not intended here to deny the prerogative of a conqueror to confiscate for political offenses, or to withdraw franchises which by the law of nations can be withdrawn by Governments for the time being. Such prerogatives have been conceded by the United States as well as by other members of the family of nations by which international law is constituted. What, however, is here denied is the right of any Government to declare titles lawfully granted by its predecessor to be vacated because they could not have been lawfully granted if its own law had, at the time in question, prevailed. This pretension strikes at that principle of historical municipal continuity of Governments which is at the basis of international law."

Mr. Bayard, Sec. of State, to Mr. Roberts, Mar. 20, 1886, MSS. Instr. Chili.

On the cession of Florida to the United States the jurisdiction and authority of the former sovereign continued in full force until possession of the ceded territory had actually passed. It follows that an importation of goods into the Floridas after the cession, but previously to the

delivery of possession, was an affair between the importer and the Spanish Government, of which the Government of the United States had no right to complain.

1 Op., 483, Wirt, 1821.

But goods carried into a port of Florida before the delivery of possession, remaining in port on shipboard until after delivery and then brought into the United States, having never been entered in the Spanish custom-houses, would be subject to the revenue laws of the United States.

Ibid. See *infra*, § 161, as to treaty ceding Florida.

Grants of land in Florida made by the King of Spain to the Roman Catholic Church before the cession of that territory to the United States were valid, and were confirmed by the treaty of cession.

1 Op., 563, Wirt, 1822.
As to annexation of Louisiana and Florida see *infra*, §§ 148, 161.

V. *BENEFITS AND BURDENS PASS TO CONQUERING OR ANNEXING SOVEREIGNS.*

§ 5.

Under the treaty of the 1st of October, 1800, Louisiana was ceded to the United States in full sovereignty and in every respect, with all its rights and appurtenances, as it was held by the Republic of France and as it was received by that Republic from Spain.

New Orleans *v.* United States, 10 Peters, 662; Strother *v.* Lucas, 12 Peters, 410.
Infra, § 148.

The treaty of Guadalupe Hidalgo imposed upon the Government of the United States the obligation to protect titles to land in California acquired under Mexican rule.

Peralta *v.* U. S., 3 Wallace, 434. *Infra*, § 154.

The Government of the United States, after the cession of Louisiana, succeeded to the sovereign interests of France and Spain in that province, including reservations of the right to use soil for public purposes.

Josephs *v.* U. S., 1 Nott. and H., 197; 2 Nott. and H., 586.

But this succession did not authorize the United States to exercise prerogatives of sovereignty not consistent with the Constitution of the United States.

New Orleans *v.* U. S., 10 Pet., 662.
As to treaty ceding Louisiana, see *infra*, § 148.

An alliance between two nations cannot absolve either of them from the obligations of previous treaties with third powers.

Mr. Adams, Sec. of State, to Mr. De Onis, March 12, 1818. MSS. For. Leg. Notes.
Infra, § 136.

"No principle of international law can be more clearly established than this, that the *rights* and the *obligations* of a nation in regard to other States are independent of its internal revolutions of government. It extends even to the case of conquest. The conqueror who reduces a nation to his subjection receives it subject to all its engagements and duties towards others, the fulfillment of which then becomes his own duty. However frequent the instances of departure from this principle may be in point of fact, it cannot, with any color of reason, be contested on the ground of right."

Mr. Adams, Sec. of State, to Mr. Everett, August 10, 1818. MSS. Instruc. to Ministers. *Infra*, §§ 135–137.

"Your letter of the 24th instant and the proposals contained in it, offered as the basis of a treaty for the adjustment of all the subjects in discussion between the United States and Spain, have been received and laid before the President of the United States. I am directed by him to forbear entering into any examination of the historical disquisition concerning the original pretensions of Spain to all the territories bordering on the Gulf of Mexico and the whole country included in the French colony of Louisiana, which you have thought proper to introduce into your note. The right of the United States to the river Mississippi and to all the waters flowing into it, and to all the territories watered by them, remains as entire and unshaken by anything now adduced by you as by anything which had ever preceded it in the discussions between the two Governments. It is established beyond the power of further controversy; nor could it answer any useful purpose to reproduce proofs which have already more than once been shown, and which, remaining unimpaired, must henceforth be considered by the United States as not susceptible of refutation."

Mr. Adams, Sec. of State, to Mr. De Onis, October 31, 1818. MSS. For. Leg. Notes.

As to title to the Mississippi, see *infra*, § 30; as to treaties with France and Spain, see *infra*, §§ 148, 161.

"In the event of a state being divided into two or more independent sovereignties, the obligations which had accrued to the whole before the division are ratably binding on the different parts; for, as Story says, 'the division of an empire creates no forfeiture of previously vested rights of property.' And so, *e contrario*, where several separate states are incorporated into one sovereignty, the rights and obligations that belonged to each before the union are binding upon the new state; but, as General Halleck points out, of course the rule must be modified to suit the nature of the union formed and the characters of the act of incorporation in each particular case."

Abdy's Kent (1878), 96, citing Wheat., Elem., ed. 1863, vol. 1, p. 52, note 20.

It was held by the commissioners under the British-American mixed commission of 1853, where it appeared that a claim against Texas, on bonds for which the revenue was pledged, had not been recognized by the British Government as a subject for diplomatic intervention before the convention of 1853, and provision had previously been made by

negotiations between the United States and Texas for the adjustment of such claims, that the case did not fall within the unsettled claims referred to the commissioners.

Proceedings of commission, &c., 382.

In his opinion Mr. Upham, commissioner, said:

"The matter of the indebtedness of Texas was a distinct subject of agreement by the terms of the union. According to those terms the vacant and unappropriated lands within the limits of Texas were to be retained by her, 'and applied to the payment of the debts and liabilities of the Republic of Texas, and the residue of the lands, after discharging these debts and liabilities, was to be disposed of as the State might direct, but in no event were the debts and liabilities to become a charge upon the Government of the United States.' [United States Statutes at Large, vol. 5, p. 798.]

"The lands of Texas were thus specifically set apart for the payment of the debts of Texas, by agreement of the two Governments, in addition to any separate pledge Texas had previously made of this class of property, for the payment of her debts.

"The United States subsequently, by act of Congress, on the 9th of September, 1850, on condition of the cession of large tracts of these lands, agreed to pay Texas $10,000,000, but stipulated 'that $5,000,000 of the amount should be retained in the United States Treasury until creditors, holding bonds, for which duties on imports were specifically pledged, should file releases of all claims against the United States. [United States Statutes at Large, vol. 9, ch. 49, p. 446.]

"It thus appears that the United States has acted, from the outset, in concert with Texas, in causing express provision to be made for the payment of these debts.

"A difficulty early arose in carrying the law, above cited, into effect, for the reason that the pledge of payment of the debts of Texas was made generally upon her revenues, and was not specific 'on imposts' *eo nomine*, and for the further reason that doubts arose whether any portion of the debts could be paid, under this contract, unless the whole could be discharged.

"These questions have been considered at much length by the advising officers of Government, and reports have been made on the subject by Mr. Corwin, the Secretary of the Treasury, and more recently by Mr. Cushing, Attorney-General, on the 26th of September, 1853, and a bill is now pending before Congress for the better adjustment of the matters in controversy. [By act of Congress, passed February 28, 1855, $7,750,000 was appropriated, subject to certain arrangements, since acceded to by Texas, for the payment of Texan claims. United States Statutes at Large, vol. 10, p. 617.]

"The reports of these officers are confined to the proper construction of acts of Congress, assented to by Texas, in reference to their lands

and debts. It did not become necessary to discuss the question of the liability of the United States for the payment of the debts, and such discussion was expressly waived by them in considering the subject. The tendency of Mr. Cushing's opinion, so far as his views can be gathered, is to establish the liability of the United States for these debts in part. He says, however, that it 'by no means follows, from the action of the United States, in providing for the payment of a portion of the debts of Texas from the proceeds of the lands, the Government have *assumed* any liability thereby, or impliedly recognized any liability on their part, or that any less readiness will be shown by Texas to fulfill the engagement, in regard to her debts, contained in her compact of admission to the Union.'

"I have thus recited at length the facts relating to the indebtedness of Texas by these bonds; the compact between the two Governments, in relation to this indebtedness, on the admission of Texas into the Union, and the act of Congress and measures since had and now pending upon the subject, in order to show the position in which these claims have been regarded.

"It appears, then, that at the time of the union of these Governments, and from that time to the present, including the period of the session of this commission, the subject of these claims has been considered solely as a matter of adjustment between the United States and Texas.

"The indebtedness of Texas, some years since, was conceded to be rising $10,000,000. Whether the United States should be liable for this indebtedness I do not feel called upon to decide. It is clear Texas is not exonerated from the debt, and the United States has manifested a strong disposition to bring about its adjustment.

"My difficulty in this case is, that nothing has been shown to us bringing it within our jurisdiction, under the convention of 1853.

"There has been no evidence that claim has been made on the United States through the agency of the British Government, for the payment of this class of debts. Moreover, it has not been the policy of the ministers of either Government to interfere in behalf of their citizens, in the case of deferred payment of loans to other Governments; *certainly* not as between Great Britain and the United States.

"This question had not been brought to the notice of either Government, or been made a matter of correspondence and difficulty between them, neither was it included in any list of unsettled claims *at the date of the convention.*

"It is clear, therefore, to my mind, for these reasons, and from the contemporaneous proceedings between the United States Government and Texas as to these claims, that they had not been considered matters of international controversy with Great Britain, and were not, within the intent of either contracting party, embraced among the outstanding claims to be acted upon by this commission."

Mr. Hornby, the British commissioner, dissenting from this conclusion, the case was referred to the umpire, Mr. Bates, who "held that cases of this description were not included among the unsettled claims that had received the cognizance of the Governments, or were designed to be embraced within the provisions of the convention, and were, therefore, not within the jurisdiction of the commission."

Report of the claims commission established under the convention of 1853, with Great Britain, pp. 406–409, 426.

As to annexation of Texas, see *infra*, §§ 70, 72, 154.

"By the annexation of Texas to the United States, the power to lay and collect duties on imports passed to the latter: but Texas retained her public lands, pledged to the payment of her debts; and the act of annexation declared that they should in no event be a charge on the United States. Afterwards, the United States took portions of those public lands, agreeing to pay therefor ten millions of dollars, half to be retained until the holders of the bonds of Texas, for which her customs duties were pledged, should release their claims. By a later act the United States reserved three-quarters of the sum, to be paid *pro rata* among the bondholders on their releasing their claims. Some of these bondholders were British subjects; and the claims of one (James Holford) were submitted to the mixed commission established under the convention of February 8, 1853; but the commission decided that the claims were not within the jurisdiction of the commission, as they had never been matter of diplomatic demand by Great Britain on the United States. [Report of the commission under the convention of 1853, 382–426. U. S. laws, v, 797; viii, 446; x, 617.]

"It certainly would not be satisfactory to say that the United States discharges its obligation to the creditors of Texas, to whom her customs were pledged, by paying only the amount of the customs received. The United States determines what those duties shall be, in reference to the interests and policy of the whole Republic. The condition of Texas is changed by her annexation. The new government has a large control over the material resources of the inhabitants, in the way of internal revenues, excise or direct taxation, in its demands on the services of the people, and in the debts it can impose; in fact, the entire public system of Texas has passed into other hands, and no such state of things any longer exists as that to which the creditor looked. It may be better or worse, but it is not the same; and, if the duties laid by the United States and collected in Texan ports did not in fact pay the debts, it would be unjust for the United States to limit the payment of the creditor to them. The truth is, by the annexation the United States changed the nature of the thing pledged, and is bound generally to do equity to the creditor.

"In the separations and rearrangements of nations in Europe, special provisions are usually made for the payment of public debts; and the principle seems admitted that, in case of a division of a state, each new state is bound for the whole debt contracted by the former; and, in case of a union of states, it seems equally clear that, as the whole must defend the part in war, which is the international process of attachment, it must practically pay the debt, although the foreign power may look only to the people and land of the state which made the contract. The formation of the new states so alters the nature of all the securities

the creditor looked to, that the new state has a general obligation to see that he does not suffer by the change."

Dana's Wheaton, § 30, note 18.

See President Tyler's fourth annual message, and 87 Ann. Reg., 273, 305; and as to Texas, see *infra*, §§ 70, 72, 154.

"The liability of the United States for the debts of Texas came before the mixed commission, under the convention with England of 1853, in the case of a British subject who had received before the annexation bonds secured by a pledge of the faith and revenue of Texas. It was disposed of on the ground that never having been made a subject for international interposition against the United States, it did not fall within the scope of the convention; but it seemed to be admitted that the liability of the United States, if any, arose, not from the merger, but from the transfer, under the Constitution of the United States, to the Federal Government of the duties on imports. It was said by the American commissioner, in announcing his opinion, that it was an inaccurate view of the case to regard this annexation as an entire absorption of one nation and its revenues by another. 'Texas is still a sovereign State, with all the rights and capacities of government, except that her international relations are controlled by the United States, and she has transferred to the United States her right of duties on imports.' And he seemed to consider any claim arising from the previous pledge of such duties to be limited to their value. The British commissioner held that 'the obligation of Texas to pay her debts is not in dispute, nor has it been argued that the mere act of her annexation to the United States has transferred her liabilities to the Federal Government, though certainly, as regards foreign governments, the United States is now bound to see that the obligations of Texas are fulfilled. It is the transfer of the integral revenues of Texas to the Federal Government that is relied on as creating the new liability.' Decisions of the commission of claims under the convention of 1853, pp. 405-420."

Lawrence's Wheaton, ed. 1863, p. 54, *note*.

As to public debt of Texas, see papers connected with House Mis. Doc. No. 17, 33d Cong., 2d sess.

As to effect of revolution on obligations, see *infra*, §§ 137, 240.

As to effect of a treaty of cession as a deed of the ceded territory by its former sovereign, see Foster *v.* Neilson, 2 Pet., 253, 307; U. S. *v.* Arredondo, 6 *id.* 691, 738; *infra*, § 148, *supra*, § 4.

For a general discussion of the effect of the cession of Florida to the United States under the treaty of 1819, see Mitchel *v.* United States, 9 Peters, 711; *infra*, § 161.

"While it may be true that as a general rule when one country is absorbed in another, the treaties of perhaps the more inconsiderable of the two are often regarded as annulled because of the convenience and the interests of other states, which lead them to regard such annulment with favor as tending to their own advantage, nevertheless it is believed that the absorption of a state is not always attended by an admitted annulment of its treaties. The union between the United States and Texas, to which you refer, was effected by the legislation of the parties. It necessarily canceled the treaties between Texas

and foreign powers, so far at least as those treaties were inconsistent with the Constitution of this country, which requires customs duties to be uniform *throughout the United States.*"

Mr. Fish, Sec. of State, to Aristarchi Bey, Sept. 18, 1876. MSS. Notes, Turkey.

As to Texas, see further, *infra*, § 72, *et seq.*, § 154.

As to effect of annexation on treaties, see *infra*, § 36.

Chili, in taking possession, at the close of the late war with Peru, of the guano deposits belonging to Peru, took them subject only to such liens as were binding under Peruvian law at the time of cession.

Mr. Bayard, Sec. of State, to Mr. Cowie, June 10, 1885. MSS. Dom. Let. (See App., Vol. III, § 5.)

By the formation of the North German Union, after the battle of Sadowa, the entire navy of the union was placed under the command of Prussia. It was held that the provision of the treaty of May 1, 1828, between the United States and Prussia, for the arrest of deserters from the public vessels of the respective countries, applied to public vessels sailing under the flag of the North German Union.

12 Op., 463, Evarts, 1868.

VI. *BUT SUCH COUNTRY NOT AFFECTED BY ACTS OF PRIOR SOVEREIGN AFTER CESSION.*

§ 5a.

Grants made by the Spanish Government in the Mississippi Territory after the ratification of the treaty by which the land was ceded to the United States are void; and, though a patent were dated before, unless delivered before, it fails to carry title.

1 Op., 108, Lincoln, 1802.

Grants of contested territory made *flagrante bello* by the party who fails, can only derive validity from treaty stipulations.

Harcourt *v.* Gaillard, 12 Wheaton, 523.

An adjudication as to title to certain lands in Louisiana, made by a Spanish tribunal in that territory after its cession to the United States, but before actual possession had been surrendered, the territory being *de facto* in the possession of Spain, and subject to Spanish laws, was held valid as the adjudication of a competent tribunal having jurisdiction of the case.

Keene *v.* McDonough, 8 Peters, 308.

The authorities of Spain had power to make grants of the public domain in Florida in accordance with their own ideas of the merits of the grantee, and the court can only consider the questions whether a grant was made and what was its legal effect.

U. S. *v.* Hanson, 16 Peters, 196; U. S. *v.* Acosta, 1 Howard, 24.

Grants made by the Spanish authorities of lands in Louisiana, after its cession to France, and before its cession by the latter to the United States, are void.

U. S. *v.* Reynes, 9 Howard, 127; Davis *v.* Concordia, *id.*, 280.

Grants made by the Spanish authorities in territory which, upon the subsequent settlement of a disputed boundary line, was determined to belong to one of the United States, are void.

Robinson *v.* Minor, 10 Howard, 627.

Grants made by the French authorities in Louisiana after the treaty of Fontainebleau are void, unless continued possession laid a foundation for presuming a confirmation by the authorities of Spain.

U. S. *v.* Pillerin, 13 Howard, 9.

Conditions which are attached to a grant by a prior sovereign, and which are inconsistent with the policy of the United States, will not be enforced by the United States after the conquest of the territory containing the land granted.

U. S. *v.* Vaca, 18 Howard, 556.

A grant of lands in California, while it was a Mexican province, made by the chief of an administration, during an intestine war, when he was in flight from the seat of Government, and his cause, soon afterwards completely overthrown, in extremity, cannot be sustained, its validity never having been acknowledged by the grantor's successors, and no sanction ever having been given it by the United States.

U. S. *v.* Sutter, 21 Howard, 170. U. S. *v.* Rose, 23 *id.*, 262.

The authority and jurisdiction of Mexican officials in California are to be regarded as having ceased on the 7th of July, 1846, the political department of the Government of the United States having designated that as the day when the conquest of California was completed and the Mexican officials displaced.

U. S. *v.* Yorba, 1 Wallace, 412. (See Stearns *v.* U. S., 6 *id.*, 589. U. S. *v.* Pico, 23 Howard, 321.)

The fact that Mexico declared through her commissioners who negotiated the treaty of Guadalupe-Hidalgo that no grants of land were issued by the Mexican governors of California after May 13, 1846, does not affect grants actually made after that date by those governors, while their authority and jurisdiction continued.

U. S. *v.* Yorba, 1 Wallace, 412.

By the conquest of California by the United States Mexican rule was displaced, and with it the authority of Mexicans officials to alienate the public domain. Until Congress provided a government for the country it was in charge of military governors, who, with the aid of subordinate officers, exercised municipal authority; but the power to

grant land or confirm titles was never vested in these military governors, nor in any person appointed by them.

Alexander *v.* Roulet, 13 Wallace, 386. (See Mumford *v.* Wardwell, 6 *id.*, 423.)

"Suffice it to say, that the Government of the United States, ever since the acquisition of Louisinia, in its legislative, executive, and judicial departments, has always held in theory, and by repeated acts of Congress and judicial decisions asserted in practice, that the territory between the Perdido and the Iberville rightfully constituted a portion of the province of Louisiana, as ceded by France to the United States on the 30th of April, 1803; and that the treaty between His Catholic Majesty and the United States, of the 22d February, 1819, has, in no respect whatever, strengthened the claims of Spanish grantees to lands embraced within these limits. This being the fact, it therefore follows, as a necessary consequence, that the grant by the Spanish intendent, Morales, of land within this territory, on the 24th March, 1804, had been made after the date of the Louisiana treaty, was without authority and is void."

Mr. Buchanan, Sec. of State, to Mr. Calderon de la Barca, July 27, 1847, MSS. Notes, Spain.

See *infra*, § 148, as to treaty for annexation of Louisiana.

VII. *COLONIES BECOMING INDEPENDENT RETAIN THEIR BOUNDARIES AND OTHER RIGHTS.*

§ 6.

"It has never been admitted by the United States that they acquired anything by way of cession from Great Britain by that treaty (of 1783). It has been viewed only as a recognition of pre-existing rights, and on that principle the soil and sovereignty within their acknowledged limits were as much theirs at the declaration of independence as at this hour. By reference to the treaty it will be found that it amounts to a simple recognition of the independence and the limits of the United States, without any language purporting a cession or relinquishment of right on the part of Great Britain. In the last article of the treaty of Ghent will be found a provision respecting grants of land made in the islands then in dispute between the two states, which affords an illustration of this doctrine. By that article a stipulation is made in favor of grants before the war, but none for those which were made during the war."

Johnson, J., Harcourt *v.* Gaillard, 12 Wheaton, 527.

Henderson *v.* Poindexter's Lessee, 12 Wheaton, 530.

As to fisheries, see *infra*, §§ 302 *ff.*

Under the treaty with Great Britain of 1783 the United States succeeded to all the rights in that part of old Canada which now forms the

State of Michigan that existed in the King of France prior to its conquest from the French by the British in 1760; and, among those rights, to that of dealing with the seigniorial estate of lands granted out as seigniories by the said king, after a forfeiture had occurred for nonfulfillment of the conditions of the fief.

U. S. *v.* Repentigny, 5 Wallace, 211.
As to effect of treaty of independence see further, *infra*, § 150.

"The United States regard it as an established principle of public law and of international right that when a European colony in America becomes independent it succeeds to the territorial limits of the colony as it stood in the hands of the parent country."

Mr. Marcy, Sec. of State, to Mr. Dallas, July 26, 1856. MSS. Instruc., Great Britain.

"Whether the treaty of 1783 was the origin of the territorial sovereignty of the States of the American Union was discussed during the long pending controversy in relation the northeastern boundary of Maine. The British secretary of state for foreign affairs, Lord Aberdeen, having assumed, in his note of August 14, 1828, as the ground for claiming exclusive possession till the award of the arbiter was rendered, that the American title to the territory in dispute was to be deduced solely from the treaty of peace, it was replied:

'Before the independence of the United States not only the territory in dispute but the whole of the adjoining province and state was the property of a common sovereign. * * * To use the words of a celebrated authority, 'When a nation takes possession of a distant country, and settles a colony there, that country, though separated from the principal establishment or mother country, naturally becomes a part of the state equally with its ancient possessions.'

"From the principle here established, that the political condition of the people of the mother country, and of the colonies during their union, is the same, the inference is unavoidable that when a division of the empire takes place the previous rights of the common sovereign, on matters equally affecting both of the states, accrue as well to the one as to the other of them. Mr. Lawrence to Lord Aberdeen, August 22, 1828."

Lawrence's Wheaton, ed. 1863, 37, 977.
As to treaty of independence, see *infra*, § 150.
As to northwestern boundary, see dispatch No. 287 of Mr. Bancroft, minister to Prussia, and comments of Mr. Fish, Secretary of State, to Mr. Bancroft, November 27, 1871. MSS. Instruc., Prussia. Same to same, March 29, 1872, *id.*
As to treaty with Great Britain as to boundary, see *infra*, § 150.
As to Alaska boundary, see Mr. Bayard to Mr. Phelps, November 20, 1885. MSS. Instruc., Great Britain.
As to treaty purchasing Alaska, see *infra*, § 159.
As to Russian claim to northwestern waters, see *infra*, §§ 32, 159.
As to effect of treaties of annexation, see *infra*, §§ 136, 140, *ff.*

VIII. *TITLE OF DE FACTO GOVERNMENT TO OBEDIENCE.*

§ 7.

The legislatures of the seceded States during the late civil war are to be regarded, even by the Government of the United States, as exercising *de facto* authority in all cases in which their domestic power was absolute, and in which their action did not impair the supremacy of the national authority or the rights of citizens under the Constitution of the United States.

Texas *v.* White, 7 Wall., 700; Horn *v.* Lockhart, 17 Wall., 570; Sprott *v.* U. S., 20 Wall., 459. (See U. S. *v.* Insurance Company, 22 Wall., 99.)

Amelia Island, on the Florida coast, at the time belonging to Spain, was seized and occupied by the United States in 1817, on the ground that this was necessary to root out certain buccaneers who were there congregated. This possession, it was held, could not be contested by a third power, and could only be contested by Spain; and hence the seizure by the United States, for violation of its territorial law, of a vessel of a third power within the territorial waters of Amelia Island could not be contested by such third power.

Mr. Gallatin, minister at Paris, to Baron Pasquier, French minister of foreign affairs, June 28, 1821; 2 Gallatin's Works, 187.

As to seizure of Amelia Island, see *infra*, § 50.

"When a colony is in revolt, and before its independence has been acknowledged by the parent country, the colonial territory belongs, in the sense of revolutionary right, to the former, and in that of legitimacy, to the latter. It would be monstrous to contend that in such a contingency the colonial territory is to be treated as derelict, and subject to voluntary acquisition by any third nation. That idea is abhorrent to all the notions of right which constitute the international code of Europe and America.

"And yet the assumption that, pending a war of colonial revolution, all territorial rights of both parties to the war become extinguished and the colonial territory is open to seizure by anybody, is the foundation of most of the disputed pretensions of Great Britain in Central America."

Mr. Marcy, Sec. of State, to Mr. Dallas, July 26, 1856. MSS. Instruc., Great Britain.

As to effect of revolution on treaties, see *infra*, § 137.

"It is the duty of foreigners to avoid all interference under such circumstances (in cases of civil war), and to submit to the power which exercises jurisdiction over the places where they resort, and, while thus acting, they have a right to claim protection, and also to be exempted from all vexatious interruption, when the ascendancy of the parties is temporarily changed by the events of the contest. Undoubtedly the considerations you urge respecting the true character of an armed opposition to a government are entitled to much weight. There may be local

insurrections, armed opposition to the laws, which carry with them none of the just consequences recognized by the law of nations as growing out of a state of civil war. No fixed principle can be established upon this subject, because much depends upon existing circumstances. Cases, as they arise, must be determined by the facts which they present; and the avowed objects of the parties, their relative strength, the progress they respectively make, and the extent of the movement, as well as other circumstances, must be taken into view."

Mr. Cass, Sec. of State, to Mr. Osma, May 22, 1858. MSS. Notes, Peru. *Supra*, § 203.

"While contending parties are carrying on a civil war those portions of the country in the possession of either of them become subject to its jurisdiction, and the persons residing there owe to it temporary obedience. But when such possession is changed by the events of the war and the other party expels its opponents, the occupation it acquires carries with it legitimate authority, and the right to assume and exercise the functions of the government. But it carries with it no right, so far, at any rate, as foreigners are concerned, to give a retroactive effect to its measures and expose them to penalties and punishments and their property to forfeiture for acts which were lawful and approved by the existing government when done."

Ibid. That aliens are bound to local allegiance, see *infra*, § 203.

"In the case of the controversy between the United States and Peru, growing out of the capture and confiscation of two American vessels for taking guano under the authority of a revolutionary government in temporary possession of some of the seaports and guano deposits, and in contravention of the laws of Peru, it was maintained by the administration of President Buchanan that the citizens or subjects of a foreign nation may carry on commerce with the portions of a country in the hands of either of the parties to a civil war, and without awaiting any action on the part of their own Government, nor in such case can they be subjected to capture or detention by the other party, unless for a violation of neutral obligations."

Lawrence's Wheaton, ed. 1863, p. 575.

"I transmit a copy of a note of yesterday, addressed to this Department by Sir Edward Thornton, Her Britannic Majesty's envoy extraordinary and minister plenipotentiary accredited to this Government, requesting that you may be authorized to use your good offices towards preventing the exaction by the Mexican Government of duties on goods imported by Messrs. Kelly, at Mazatlan, which duties had previously been paid to insurgents there. You will take that course accordingly. It is difficult to understand upon what ground of equity or public law such duties can be claimed. The obligation of obedience to a government at a particular place in a country may be regarded as suspended, at least, when its authority is usurped, and is due to the usurpers if they choose to exercise it. To require a repayment of duties in such cases is tantamount to the ex-

action of a penalty on the misfortune, if it may be so called, of remaining and carrying on business in a port where the authority of the government had been annulled. The pretension is analogous to that upon which vessels have been captured and condemned upon a charge of violating a blockade of a port set on foot by a proclamation only, without force to carry it into effect.

"The principle that duties once paid in a part of the territory of the country in possession of an enemy are not liable again to be paid when the enemy is expelled or withdraws, was solemnly decided by the Supreme Court of the United States in the case of Rice, 4th Wheaton, page 246.

"Since the close of the civil war in this country suits have been brought against importers for duties on merchandise paid to insurgent authorities. Those suits, however, have been discontinued, that proceeding probably having been influenced by the judgment of the Supreme Court adverted to."

Mr. Fish, Sec. of State, to Mr. Nelson, February 11, 1873. MSS. Instruc., Mex.; For. Rel., 1873.

The United States, as their rule of public law, recognize governments *de facto*, and also governing persons *de facto*, without scrutiny of the question of legitimacy of origin or accession.

7 Op., 582, Cushing (1855). (See *infra*, § 203.) S. P. Mr. Bayard to Mr. Buck, Feb. 18, 1886. MSS. Inst., Peru.

IX. *LAW OF NATIONS PART OF LAW OF LAND.*

§ 8.

The laws of the United States ought not, if it be avoidable, so to be construed as to infract the common principles and usages of nations, or the general doctrines of international law.

Talbot *v.* Seaman, 1 Cranch, 1.

Even as to a municipal matter the *lex fori* should be so construed as to conform to the law of nations unless the contrary be expressly prescribed.

The Amelia, 1 Cranch, 1; 4 Dall., 34; Murray *v.* The Charming Betsy, 2 Cranch, 64, 118; Little *v.* Barreme, 2 Cranch, 170.

An act of Congress ought never to be construed to violate the law of nations if any other possible construction remains, nor should it be construed to violate neutral rights or to affect neutral commerce further than is warranted by the law of nations, as understood in this country.

Murray *v.* Charming Betsy, 2 Cranch, 118.

The law of nations is part of the municipal law of Pennsylvania.

Res. *v.* De Long Champs, 1 Dall., 111.

The law of nations is the great source from which we derive those rules respecting belligerent and neutral rights which are recognized

by all civilized and commercial states throughout Europe and America. The law of nations is in part unwritten and in part conventional. To ascertain that which is unwritten, we resort to the great principles of reason and justice; but, as these principles will be differently understood by different nations under different circumstances, we consider them as being in some degree fixed and rendered stable by judicial decisions. The decisions of the courts of every country, so far as they are founded on a law common to every country, will be received, not as authority, but with respect, and will be considered in adopting the rule which is to prevail here.

Thirty hogsheads of sugar *v.* Boyle, 9 Cranch, 191.

The law of nations should be respected by the Federal courts as a part of the law of the land.

The Nereide, 9 Cranch, 388.

The intercourse of the United States with foreign nations, and the policy in regard to them, being placed by the Constitution in the hands of the Federal Government, its decisions upon these subjects are, by a universally acknowledged principle of international law, obligatory upon every citizen of the Union.

Kennett *v.* Chambers, 14 Howard, 38.

The maritime law (unless part of international law) is only so far operative as law in any country as it is adopted by the laws and usages of that country. The principles laid down on this subject in *Norwich Company* v. *Wright* (13 Wall., 104), and in *The Lottawana* (21 *id.*, 558), reasserted and affirmed.

The Scotland, 105 U. S., 24.

The law of nations, unlike foreign municipal laws, does not have to be proved as a fact.

The Scotia, 14 Wallace, 170

"The law of nations makes an integral part * * * of the laws of the land."

Mr. Jefferson, Sec. of State, to Mr. Genet, June 5, 1793. MSS. Notes, For. Leg. Wait's Am. St. Pap., 30. 1 Am. St. Pap., F. R., 150.

"Every nation, on being received, at her own request, into the circle of civilized governments, must understand that she not only attains rights of sovereignty and the dignity of national character, but that she binds herself also to the strict and faithful observance of all those principles, laws, and usages which have obtained currency among civilized states, and which have for their object the mitigation of the miseries of war.

"No community can be allowed to enjoy the benefit of national character in modern times without submitting to all the duties which that character imposes. A Christian people who exercise sovereign power,

who make treaties, maintain diplomatic relations with other states, and who should yet refuse to conduct their military operations according to the usages universally observed by such states, would present a character singularly inconsistent and anomalous."

Mr. Webster, Sec. of State, to Mr Thompson, April 15, 1842; MSS. Instruc., Mexico; also 6 Webster's Works, 437. See *infra*, § 347 *ff*.

If a govenment "confesses itself unable or unwilling to conform to those international obligations which must exist between established governments of friendly states, it would thereby confess that it is not entitled to be regarded or recognized as a sovereign and independent power."

Mr. Evarts, Sec. of State. to Mr. Foster, August 2, 1877, MSS. Instruc., Mexico.

A judicial decree, contravening the law of nations, has no extraterritorial force.

Mr. Evarts, Sec. of State, to Mr. Brunetti, October 23, 1878; MSS. notes, Spain. Mr. Bayard, Sec. of State, to Mr. McLane, June 23, 1886; MSS. Inst., France. (See *infra*, § 329.)

The law of nations is considered as a part of the municipal law of each state.

5 Op. (Appendix), 691, Lincoln, 1802. See App., Vol. III, § 8.

International law is founded upon natural reason and justice, the opinions of "writers of known wisdom, and the practice of civilized nations."

9 Op. 350, Black, 1859.

X. *MUNICIPAL LAWS NOT EXTRATERRITORIAL.*

§ 9.

Municipal variations of the law of nations have no extraterritorial effect.

The Resolution, 2 Dall., 1, (Fed. Ct. App. 1781). The Nereide, 9 Cranch, 388. (See Henfield's case, Whart. St. Tr., 49–66.)

No foreign power can rightfully erect any court of judicature within the United States, unless by force of a treaty. The admiralty jurisdiction exercised by consuls of France in the United States is not of right.

Glass *v.* The sloop Betsey, 3 Dallas, 6.

Whatever may be the municipal law under which a tribunal acts, if it exercise a jurisdiction which its sovereign is not allowed by the laws of nations to confer, its decrees must be disregarded out of the dominions of the sovereign.

Infra § 329 *a*; Rose *v.* Himely, 4 Cranch, 241. But see Hudson *v.* Guestier, 6 *id*, 285.

As to territorial supremacy, see *supra*, § 1, *infra*, § 11*a*. That municipal neutrality laws are not extraterritorial, see *infra*, § 403.

A power to seize for a violation of the laws of the country is an attribute of sovereignty, and is to be exercised within the limits which circumscribe the sovereign power from which it is derived. And while the rights of war may be exercised on the high seas, a seizure beyond the limits of territorial jurisdiction for a breach of a municipal regulation is not warranted by international law.

Rose v. Himely, 4 Cranch, 241. (*Infra*, § 403.)

The municipal laws of one nation do not extend, in their operation, beyond its own territory, except as regards its own citizens or subjects.

The Apollon, 9 Wheat., 362.

One country cannot execute the penal laws of another.

The Antelope, 10 Wheaton, 66.

As to jurisdiction of offenses on shipboard, and in particular as to Jonathan Robbins' case, see *infra*, § 271*a*.

As a general proposition the laws of one country have in themselves no extraterritorial force, and whatever force they are permitted to have in foreign countries depends upon the comity of nations, regulated by a sense of their own interests and public convenience.

Le Roy v. Crowninshield, 2 Mason, 151.

The presumptions indulged in support of judgments of superior courts of general jurisdiction are limited to jurisdiction over persons within their territorial limits; persons who can be reached by their process.

Galpin v. Page, 18 Wallace, 350.

Under the statute law of France, which provides that a father-in-law and mother-in-law must make allowance to a son-in-law who is in need, so long as a child of the marriage is living, a son-in-law, a French citizen, obtained a decree in the French courts for an allowance against his father-in-law and mother-in-law who were American citizens, all the parties then residing in France. The son-in-law subsequently brought an action of debt on the decree, in the courts of the United States, to recover the amount of the decreed payment, which had not been paid. It was ruled:

(1) That the suit could not be maintained. The laws of France, upon which such decrees were made, are local in their nature and operation. They are designed to regulate the domestic relations of those who reside there, and to protect the public against pauperism. They have no extraterritorial significance, but must be executed upon persons and property within their jurisdiction.

(2) Adjudications of the French tribunals under these laws are in the nature of local police regulations, like orders of filiation and orders made under local statutes to guard against pauperism, and are not of extra-territorial operation, like judgments for claims founded upon contracts or other private rights everywhere recognized.

De Brimont v. Penniman, 10 Blatchf., 436.

Municipal laws "have no controlling operation beyond the territorial limits of the countries enacting them." Hence, in questions between two independent nations, "neither has a right to appeal to its own municipal laws for the rules to settle the matter in dispute which occurred within the jurisdiction of a third independent power."

Mr. Marcy, Sec. of State, to Mr. Hülseman, Sept. 20, 1853. MSS. Notes, Aust. (Koszta case). See *infra*, § 198.

"It cannot be expected that any Government would go so far as to yield to a pretension of a foreign power to revise and review the proceedings of its courts under the claim of an international right to correct errors therein, either in respect to the application of principles of law, or the application of facts as evidence in cases where the citizens of such foreign power have been convicted. It certainly could not be expected that such a claim would be allowed before the party making it had first presented a clear case *prima facie* of wilful denial of justice or a deliberate perversion of judicial forms for the purpose of oppression."

Mr. Marcy, Sec. of State, to Mr. Jackson, Apr. 6, 1855. MSS. Inst. Austria. *Infra*, § 241 *ff*.

"A certificate of discharge from a court in bankruptcy can have no validity in a foreign country as against a foreign creditor representing a debt contracted in a foreign country unless he has brought his claim within the jurisdiction of the courts of the United States by proving it, and thus putting himself in a position to share in the dividends (*infra*, § 329*a*). Whether, in case he does so prove it, such certificate will have weight in a foreign country will depend upon the local laws in such country, whose courts will undoubtedly act with due regard to the comity of nations."

Mr. Fish, Sec. of State, to Mr. Riger, October 21, 1869. MSS. Dom. Let. (See Whart. Conf. of Laws, §§ 531, 804.)

"While there is no special statute authorizing the Executive to grant permission to land a cable on the coast of the United States, neither is there any statute prohibiting such action, and I find on examination of the records of this Department that in 1875 conditional authority was given to land a French cable at Rye Beach, N. H., and that in 1879 permission was given to land a cable on Cape Cod. These precedents seem to justify a similar concession to the Central and South American Company, which there is the less hesitation in according, as it is a corporation organized under the laws of a State of the United States, and purposes to land its cable on the shores of the State which created it.

"The authority of the executive branch of the Government to grant this permission is exercised only in the absence of legislation by Congress regulating the subject, and concessions of the privilege heretofore

have been subject to such future action by Congress in the matter as it may at any time take."

Mr. Davis, Acting Sec. of State, to Mr. Thompson, October 10, 1882. MSS. Dom. Let. (See to the same effect, Mr. Frelinghuysen, Sec. of State, to Messrs. Mackay and Bennett, December 5, 1883. MSS. Dom. Let.)

As to international telegraph lines through Central America and along the northern Pacific shores, see circular of Mr. Seward, Sec. of State, August 18, 1864. MSS. Instruct. Am. States.

"No sovereignty can extend its process beyond its own territorial limits so as to subject either persons or property to its judicial decisions, and every exertion of authority of this sort beyond its limits is a mere nullity, and incapable of binding such persons or property in any other tribunals."

Halleck Int. Law, cited by Mr. Frelinghuysen, Sec. of State, to Mr. Morgan, May 17, 1884. MSS. Inst., Mexico; For. Rel,. 1884.

See further Whart. Conf. of Laws, §§ 734 *ff*; *infra*, § 406. As to nonubiquity of prize court action, see *infra*, § 329*a*.

While, however, statutes, as a rule, have no extraterritorial effect by their own vigor, it is otherwise when they are part of a system of international law which is adopted as part of the law of the land. (See *supra*, § 8.) Nor is this incorporation of international law in the law of the land confined merely to public law. It extends to what is called private international law, that is, international law which affects the rights of individuals. Thus, as will be seen, the form of marriage is determined by the law of the place of solemnization (*infra*, § 261); personal status is in some cases determined by the law of domicil (Whart. Conf. of Laws, § 101, *ff*), while contracts as to their mode of solemnization are governed by the law of the place of solemnization, as to their interpretation by the law of the place from which the parties drew their idioms, and as to their performance by the law of the place of performance. *Ibid.*, § 393, *ff*.

That statutory limitations as to piracy bind only municipally, see *infra*, § 382.

That municipal expansions or restrictions of the law of nations have no extraterritorial effect, see *infra*, § 402 and 402*a*.

That prize courts when following merely municipal law, cease to be internationally authoritative, see *infra*, § 369*a*.

Defective or erroneous municipal legislation, by which a sovereign claims to be unable to perform his international obligations, is no defense to a demand by another sovereign for redress for a violation of international duty. This position was taken by Great Britain against the United States in the McLeod case (*infra*, § 21); by the United States against France in respect to French spoliations (*infra*, §§ 130, 318); by the United States against Great Britain in respect to the Alabama and cognate claims (*infra*, § 402*a*); and by the United States against Mexico and other States, in denying their right to impose by statute restrictions or disabilities not sustainable in international law on citizens of the United States (*infra*, §§ 15, 175*a*).

"Neither government" (France or the United States, the question arising at the time of the refusal of the French chamber of deputies to make appropriations to carry out the treaty for payment to the United States of French spoliations) "has anything to do with the auxiliary legislative measures necessary, on the part of the other state, to give effect to the treaty. The nation is responsible to the government of the other nation for its non-execution, whether the failure to fulfill it proceeds from the omission of one or the other of the departments of its government to perform its duty it respect to it. The omission here is on the part of the legislature; but it might have been on the part of the judicial department—the court of cassation might have refused to render some judgment necessary to give effect to the treaty. The King cannot compel the Chambers, neither can he compel the courts; but the nation is not the less responsible for the breach of faith thus arising out of the discordant action of the international machinery of its constitution."

Mr. Wheaton, Minister at Copenhagen, to Mr. Butler, Attorney-General, January 20, 1835, adopted in Lawrence's Wheaton (1863), 459; and quoted also with approval in Meier on Abschluss von Staatsverträgen, Leipzig, 1874, p. 168.

XI. *DISTINCTIVE RULE AS TO TAXES.*

§ 10.

For the purpose of taxation, some kinds of personal property may have a *situs* independent of the domicil of the owner; *e. g.*, property which has a visible and tangible existence; or public securities consisting of State bonds and bonds of municipal bodies; but not personal property, such as bonds and debts generally, which have no *situs* independent of the domicil of the owner.

State tax on foreign-held bonds, 15 Wallace, 300.

For the purposes of taxation, a debt has its *situs* at the residence of the creditor, and may be there taxed.

Kirtland *v.* Hotchkiss, 100 U. S., 491. See App., Vol. III, § 10.

"So far as the question of taxation is concerned, the principles are believed to be quite well understood which ought to govern the question.

"That citizens of the United States who choose to reside in Cuba must, in the absence of treaty provisions or other exemptions, bear their just and honest share of such burdens, by way of taxation, as the needs of good government and public protection require, needs no argument.

"The right of taxation is an attribute of sovereignty.

"The right is admitted but complaints are based on the fact that opportunity is taken under the cover of a right, to perpetrate wrong and injustice. * * *

"It is difficult (for instance) to call it a rightful exercise of the sovereign power of taxation, to require an individual owner of an estate to erect a fort, of a particular and specified description, on his estate, at his

individual cost, or to require him to construct a particular line of telegraph; and when such things are done by an arbitrary order of a local or a military officer, they have very much the appearance of something very different from what is generally recognized as taxation."

Mr. Fish, Secretary of State, to Mr. Cushing, May 22, 1876, MSS. Instruc., Spain. See *infra*, §§ 37, 230; App., Vol. III, § 10.

XII. *DISTINCTIONS UNDER FEDERAL CONSTITUTION.*

§ 11.

The several States which compose the Union, so far at least as regards their municipal regulations, became entitled, from the time when they declared themselves independent, to all the rights and powers of sovereign States; and among those rights was that of the allegiance of their citizens.

McIlvaine v. Coxe's Lessee, 4 Cranch, 209; Inglis v. Trustees, &c., 3 Peters, 99.

In the Constitution of the United States the term State most frequently expresses the combined idea of people, territory, and government. A State, in the ordinary sense of the Constitution, is a political community of free citizens, occupying a territory of defined boundaries and organized under a government sanctioned and limited by a written constitution, and established by the consent of the governed. It is the union of such States, under a common Constitution, which forms the distinct and greater political unit which that Constitution designates as the United States, and makes of the people and States which compose it one people and one country.

Texas v. White, 7 Wall., 700.

Sovereignty for the protection of rights and immunities created by or dependent upon the Constitution rests with the United States.

U. S. v. Reese, 92 U. S., 214.

Sovereignty for the protection of the rights of life and personal liberty within the respective States rests with the States, subject to the qualifications of the Constitution.

U. S. v. Cruikshank, 92 U. S., 542.

Correction or revision of the action of State courts is not within the province of the Executive of the Federal Government, however much he may decline to give executive efficiency to their judgments.

Mr. Seward to Mr. Van Limburg, Sept. 30, 1862; MSS. Notes, Netherlands.

The Secretary of State, as representing the Executive, is the sole authority to whom foreign sovereigns can appeal for redress for injuries inflicted on their subjects within one of the States of the American Union. (*Infra*, § 79.) But while such is the case, such sovereigns will be informed by the Secretary of State that in the United States, as in

all governments where the judiciary and the executive have coordinate powers, appeals for redress in such cases must be made primarily to the local judiciary, and that the Executive of the United States can only be appealed to when there has been a failure of justice, after the courts have been duly resorted to. (*See infra*, §§ 230, 244, 329*a*.)

XIII. *TERRITORY, AS A RULE, INVIOLABLE.*

(1) General Principles.

§ 11*a*.

No sovereign, according to modern international law, can exercise the prerogatives of sovereignty in any dominions but his own.

Mr. Jefferson, Sec. of State, to Mr. Ternant, May 15, 1793. MSS. For Leg. Notes; 1 Am. State Papers (F. R.), 147. See *supra*, §§ 1, 9.

"Congress, at its last session, passed laws which authorized the President to aid the colonization of persons of certain classes of African derivation, with their consent, in some tropical country, first obtaining the consent of the Government of such country to receive such settlements and protect them in all the rights of freemen. The execution of these laws was devolved by the President upon the honorable the Secretary of the Interior. That officer is understood to have recognized the honorable Mr. Pomeroy as an agent for persons belonging to the specified classes, to aid and direct them in the choice of their locations and establishing their settlements. The general instructions which were given to him by the Secretary of the Interior expressly inhibited Mr. Pomeroy from attempting to make such location and settlement in any country whatever, without first having obtained the consent of the Government of such country to protect the proposed settlement of such persons there with all the rights and privileges of freemen.

"About the time when those instructions were in course of preparation, his excellency Señor Antonio José de Yrisarri, minister plenipotentiary of the Republics of Guatemala and Salvador near the United States, gave notice to this Department that those two states were averse to receiving any such settlements; and for that reason the instructions of the Secretary of the Interior to Mr. Pomeroy were modified. He was informed that the President accepted Mr. Yrisarri's communication as a definitive declination of the two Governments which he represented to receive and protect a colony of the class proposed in their respective countries. Whereupon Mr. Pomeroy was expressly directed not to proceed with such colony to any part of the territories of either of the said Republics of Guatemala and Salvador.

"In your note, which is now under consideration, you protest, in behalf of the Republics of Costa Rica, Nicaragua, and Honduras, against the introduction of any colony of the kind proposed within the territory of either of those Republics. You also inform this Department that a

portion of the region called Chiriqui, which is claimed by Mr. Ambrose W. Thompson, and which he offers as a site for such a colony, lies unquestionably within the territory of Costa Rica, while another portion lies within the unquestioned territory of New Granada, and still a third part is in dispute between the Government of Costa Rica and New Granada; and you extend your protest so as to make it cover not only the unquestioned territory of Costa Rica, but also that portion of Chiriqui which is claimed by Costa Rica.

"I have now to inform your excellency that the acts of Congress, under which the colonization in question is proposed to be made, do not warrant the attempt to establish such a colony in any country without the previous consent of the Government thereof, and that your protest is accepted by the President as a denial of such consent on the part of the three states you so worthily represent."

Mr. Seward, Sec. of State, to Mr. Molina, Sept. 24, 1862; MSS. Notes, Cent. Am Dip. Corr. 1862.

The United States Government cannot purchase a grant of land in, or concession of right of way over, the territories of another nation, as could an individual or private corporation, since, by the law of nations, one Government cannot enter upon the territories of another, or claim any right whatever therein.

9 Op., 286, Black (1859).

(2) Recruiting in Foreign State Forbidden.

§ 12.

"One other subject of discussion between the United States and Great Britain has grown out of the attempt which the exigencies of the war in which she is engaged with Russia induced her to make, to draw recruits from the United States.

"It is the traditional and settled policy of the United States to maintain impartial neutrality during the wars which from time to time occur among the great powers of the world. Performing all the duties of neutrality towards the respective belligerent states, we may reasonably expect them not to interfere with our lawful enjoyment of its benefits. Notwithstanding the existence of such hostilities, our citizens retain the individual right to continue all their accustomed pursuits, by land or by sea, at home or abroad, subject only to such restrictions in this relation as the laws of war, the usage of nations, or special treaties, may impose; and it is our sovereign right that our territory and jurisdiction shall not be invaded by either of the belligerent parties for the transit of their armies, the operations of their fleets, the levy of troops for their service, the fitting out of cruisers by or against either, or any other act or incident of war. And these undeniable rights of neutrality, individual and national, the United States will under no circumstances surrender."

President Pierce's Third Annual Message, 1855.

"In authorizing a plan of recruitment, which was to be carried out in part within our territory, the British Government seems to have forgotten that the United States had sovereign rights as well as municipal laws which were entitled to its respect. For very obvious reasons the officers employed by Her Majesty's Government in raising recruits from the United States would, of course, be cautioned to avoid exposing themselves to the penalties prescribed by our laws, but the United States had a right to expect something more than precautions to avoid those penalties. They had a right to expect that the Government and officers of Great Britain would regard the policy indicated by these laws, and respect our sovereign rights as an independent and friendly power."

Mr. Marcy, Sec. of State, to Mr. Crampton, September 5, 1855. MSS. Notes, Great Britain.

"This Government does not contest Lord Clarendon's two propositions in respect to the sovereign rights of the United States—first, that in the absence of municipal law Great Britain may enlist, hire, or engage as soldiers within the British territory persons who have left the United States for that purpose; (this proposition is, however, to be understood as not applying to persons who have been enticed away from this country by tempting offers of reward, such as commissions in the British army, high wages, liberal bounties, pensions, and portions of the royal domain, urged on them while within the United States by the officers and agents of Her Majesty's Government); and, secondly, no foreign power has a right to enlist and organize and train men as British soldiers within the United States. The right to do this Lord Clarendon does not claim for his Government; and whether the British officers have done so or not is, as he appears to understand the case, the only question at issue, so far as international rights are involved, between the two countries.

"In his view of the question as to the rights of territory, irrespective of municipal law, Lord Clarendon is understood to maintain that Her Majesty's Government may do anything within the United States short of enlisting and organizing and training men as soldiers for the British army with perfect respect to the sovereign rights of this country.

"This proposition is exactly the reverse of that maintained by this Government, which holds that no foreign power whatever has the right to do either of the specified acts without its consent. No foreign power can, by its agents or officers, lawfully enter the territory of another to enlist soldiers for its service or organize or train them therein, or even entice persons away in order to be enlisted without express permission."

Mr. Marcy, Sec. of State, to Mr. Buchanan, December 28, 1855. MSS. Inst., Great Britain; see *infra*, §§ 392, 395. See discussion by Sir H. L. Bulwer, 99 Quar. Rev. (June, 1856), 272 *ff.*

It is not lawful to enlist soldiers in foreign territory without the consent of its Government.

7 Op., 367, Cushing, 1855.

The correspondence of the United States with Great Britain in 1856 relative to recruiting in the United States will be found in British and Foreign State Papers for 1857–8, vol. 48, 190 *ff*, comprising Mr. Crampton's dispatches of March 3, 1856, and of June 10, 1856, in his own defense, Lord Clarendon's explanation of April 30, 1856, and Mr. Marcy's instructions to Mr. Dallas of May 27, 1856.

Other portions of the correspondence are given in British and Foreign State Papers for 1860–1, vol. 51; and in Senate Ex. Doc. No. 35, 34th Cong., 1st sess.

That a neutral is bound to prevent such enlisting, see *infra*, § 395.

The correspondence relative to the dismissal of Mr. Crampton, British minister in the United States, for encouraging British recruiting in the United States, is given *infra*, § 84.

It is not, however, a breach of neutrality to permit subjects on their own motion to go to a foreign land to enlist in the service of a belligerent. [*Infra*, § 392.]

(3) PERMISSION REQUISITE FOR THE PASSAGE OF FOREIGN TROOPS.

§ 13.

In September, 1790, General Washington having put the question to Mr. Adams, Mr. Jefferson, and Mr. Hamilton, "What should be the answer of the Executive of the United States to Lord Dorchester in case he should apply for permission to march troops through the territory of said States, from Detroit to the Mississippi," Mr. Adams advised a refusal of such a request (8 J. Adams's Works, 497). Mr. Jefferson was of the same opinion. Mr. Hamilton argued earnestly and at length for the granting of the request, even though the object of the movement of troops should be the attack on New Orleans and the Spanish possessions on the Mississippi. [4 Hamilt. Works (ed. 1885), 20.]

Mr. Jefferson's opinion against the policy of permitting British troops to be transported over the territory of the United States, from Detroit to the Mississippi, is given 7 Jeff. Works, 508.

The right of the United States to send troops across the Isthmus of Panama is guaranteed by the treaty with New Granada of 1846.

Mr. Marcy, Sec. of State, to Mr. Paredes, June 20, 1853; MSS. Notes Colomb.; same to same, Oct. 12, 1853.

No belligerent army has the right of passage through, or entry into, neutral territory without the consent of its sovereign.

7 Op., 122, Cushing, 1855. See *infra*, § 397.

"In January, 1862, the Secretary of State of the United States transmitted an order to the marshal, and all other Federal officers in Portland, directing that the agents of the British Government should have all proper facilities for landing and conveying to Canada, or else-

where, troops and munitions of war of every kind, without exception. The occasion of the order was the expected arrival of a steamer from England, bound to Quebec and Montreal with troops.

* * * * * * *

"'No foreign nation inimical to Great Britain is likely to complain of the United States for extending such a comity to that power. If, therefore, there be any danger to be apprehended from it, it must come in the form of direct hostility on the part of the British Government against the United States. The United States have not only studiously practiced the most perfect justice in their intercourse with Great Britain, but they have also cultivated on their part a spirit of friendship towards her as a kindred nation, bound by the peculiar ties of commerce. The Grand Trunk Railroad, a British highway extended through the territories of the United States to, perhaps, the finest seaport of our country, is a monument of their friendly disposition. The reciprocity treaty, favoring the productions of British North America in the markets of the United States is a similar monument of the same wise and benevolent policy.' Mr. Seward to the governor of Maine, January 17, 1862."

Lawrence's Wheaton, ed. 1863, p. 195; see also 3 Lawrence, com. sur. droit. int., 434.

In 1875 permission was granted to the governor of Canada by the Government of the United States to transport "through its territory certain supplies, designed for the use of three divisions of Canadian mounted police force."

Mr. Fish, Sec. of State, to Sir E. Thornton, May 5, 1875. MSS. Notes, Great Brit.

In October, 1876, the President gave permission to Mexico "for the landing at Brazos Santiago, in Texas, of a small body of the troops of that Republic, supposed to be intended to aid in the defense of Matamoras," with the proviso that the stay be not unnecessarily long, and that the Mexican Government be held liable for any injury inflicted by the troops during their stay.

Mr. Fish, Sec. of State, to Mr. Cameron, Oct. 20, 1876. MSS. Dom. Let.

"On rare occasions the consent of a foreign government is asked, through diplomatic channels, for the passage of small bodies of troops, or for permission to do other acts which might otherwise be violation of territory; but in such cases, as the offense would be against the sovereignty of the government only, permission at times is accorded. It is seriously doubted, however, whether it is in the province of an officer of the army, in command on a distant station, to permit or sanction such violation. It is also extremely doubtful whether it is in any aspect competent to assume to permit a foreign power to transport persons in custody through the territory of the United States, maintaining over them while *in transitu* any authority or power. In such a case the rights of the individual are also involved."

Mr. Fish, Sec. of State, to Mr. Cameron, December 7, 1876. MSS. Dom. Let.

Permission was given in February, 1881, by the governor-general of Canada for the passage of the "Spaulding Guards," of Buffalo, armed and equipped, over the Canada Southern Railway from Buffalo to Detroit.

Mr. Hay, Asst. Sec. of State, to Mr. Sherman, February 24, 1881. MSS, Dom. Let.

A permission to a foreign government to transport its troops over the territory of the United States will be granted only in case of peaceful transfer devoid of any military object affecting the peace of any third state.

Mr. Bayard, Sec. of State, to Mr. Morgan, April 5, 1885. MSS. Instruc. Mex.

As to arrangement between the United States and Mexico as to the right of troops to cross the border in pursuit of hostile Indians, see Mr. Frelinghuysen, Sec. of State, to Mr. Morgan, June 6, 1882. MSS. Instruc., Mex. Mr. Bayard, Sec. of State, to Mr. Jackson, October 6, 1885, *ib.* (See also *infra*, §§ 18, 50*e*.)

As to proposition to Mexico to allow the regular troops of both countries to cross the border in pursuit of marauders, see Mr. Fish, Sec. of State, to Mr. Foster, May 4, 1875. MSS. Instruc., Mex. *Infra*, §§ 18, 50*e*.

That a neutral giving privileges of this kind to one belligerent becomes liable to the other belligerent, see *infra*, § 397.

When the passage of troops is allowed, this bestows extraterritoriality on the troops so passing.

Schooner Exchange *v.* McFaddon; 7 Cranch, 116.

As will hereafter be seen, when belligerent troops fly to neutral territory to escape a pursuing belligerent, they must lay down their arms. They are then, when in neutral territory, protected by the law of nations from their pursuers.

Infra, § 398.

(4) SEIZURE OF PERSON OR PROPERTY BY FOREIGN PRINCE FORBIDDEN.

§ 14.

A seizure for the breach of the municipal laws of one nation cannot be made within the territory of another.

The Apollon, 9 Wheaton, 362.

It is an offense against the law of nations for any persons, whether citizens or foreigners, residing in the United States, to go into the territory of Spain to recover their property by force or in any manner other than its laws permit.

1 Op., 68, Lee, 1797.

As to territorial waters, see *infra* §§ 27, 32.

So long as Denmark tolerates slavery in her dominions it is an invasion of her sovereignty to take away from St. Croix by seduction, invitation, connivance, ignorance, or mistake, slaves from the possession

of Danish owners, and if avowed and unredressed on our part this is a just cause of war.

1 Op., 566, Wirt, 1822.

The attempted arrest of Koszta, in Turkey, by Austria, was treated in the Department of State as a violation of international law.

Mr. Frelinghuysen, Sec. of State, to Mr. Randall, March 14, April 17, 1884. MSS. Dom. Let. (See *infra*, §§ 48, 198.) See also App., Vol. III, § 8.

But when an alleged criminal is brought within the jurisdiction of the United States by irregular extradition process or by kidnaping, this is a defense he cannot set up when tried for the offense for which the arrest was made. The wrong is for executive redress.

Whart. Cr. Pl. and Prac., § 27. Ker's case cited, *infra*, §§ 270, 279.

(5) AND SO OF FOREIGN JURISDICTION OF CRIMES.

§ 15.

It is incompatible with the limits of the present work to give in detail the rulings of our courts in reference to jurisdiction of crimes. In another work they are given under the following heads:

Federal judiciary has no common law jurisdiction (Whart. Cr. Law, § 253).
Federal courts have statutory jurisdiction over—
Offenses against law of nations (*id.*, § 258).
Offenses against federal sovereignty (*id.*, § 259.)
Offenses against individuals on federal soil or ships (*id.*, § 260).
Offenses against federal justice (*id.*, § 262).
Conflict and concurrence of jurisdictions.
Offenses at sea cognizable in country of flag (*id.*, 269).
Federal courts have jurisdiction of crimes on high seas out of State jurisdiction (*id.*, 270).
Sovereign has jurisdiction of sea within cannon-shot from shore (*id.*, 271).
Offenses by subjects abroad.
Subjects may be responsible to their own sovereign for offenses abroad (*id.*, 271).
Apportionment of this sovereignty between Federal and State governments (*id.*, 273).
Also over political offenses abroad (*id.*, 274).
Political extraterritorial offenses by subjects are punishable (*id.*, 275).
Perjury and forgery before consular agents punishable at home (*id.*, 276).
Homicide by subjects abroad punishable in England (*id.*, 277).
Liability of extraterritorial principal.
Extraterritorial principal may be intraterritorially indictable (*id.*, 278).
Agent's act in such case imputable to principal (*id.*, 279).
Doubts in cases where agent is independently liable (*id.*, 280).
Offenses by aliens in country of arrest.
Aliens indictable in country of arrest by Roman law (*id.*, 281).

So in English and American law (*id.*, 282).
So as to Indians (*id.*, 282*a*).
But not so as to belligerents (*id.*, 283).
Offenses by aliens abroad.
Extraterritorial offenses against our rights may be intraterritorially indictable (*id.*, 284).
Jurisdiction claimed in cases of perjury and forgery before consuls (*id.*, 285).
Punishment in such cases (*id.*, 286).
Offenses spreading over a plurality of jurisdictions.
Accessaries and co-conspirators indictable in place of accessaryship or conspiracy and of performance (*id.*, 287).
In continuous offenses each place of overt act has jurisdiction (*id.*, 288).
Adjustment of punishment in such cases (*id.*, 289).
In larceny thief is liable wherever goods are taken (*id.*, 291).
In homicide place of wound has jurisdiction, and by statute place of death (*id.*, 292).
Law of place of performance may determine indictability (*id.*, 292*a*).
Sovereigns may have concurrent jurisdiction (*id.*, 293).
Offenses against law of nations (*id.*, §§ 1860, 1889, 1900).

"No act committed in one country, however criminal, according to its laws, is criminal according to the laws of the other. Crimes, in a legal sense, are local, and are so only because the acts constituting them are declared to be so by the laws of the country where they are perpetrated. Great Britain cannot by her laws make an act committed within the jurisdiction of the United States criminal within her territories, however immoral of itself, and *vice versa*. The proposition is too clear to require illustration or to be contested; but, if that be admitted, it must also be admitted that the criminality referred to in the proviso is to be judged of by the laws of the place within whose jurisdiction the act was charged to have been perpetrated, and not where the fugitive is found."

Mr. Calhoun, Sec. of State, to Mr. Everett, August 7, 1844. MSS. Inst., Great Britain.

"We hold that the criminal jurisdiction of a nation is limited to its own dominions and to vessels under its flag on the high seas, and that it cannot extend it to acts committed within the dominion of another without violating its sovereignty and independence. Standing on this well-established and unquestioned principle, we cannot permit Great Britain or any other nation, be its object or motive what it may, to infringe our sovereignty and independence by extending its criminal jurisdiction to acts committed within the limits of the United States, be they perpetrated by whom they may. All therein are subject to their jurisdiction, entitled to their protection, and amenable exclusively to their laws."

Mr. Calhoun, Sec. of State, to Mr. Everett, September 25, 1844. MSS. Inst., Great Britain.

"By the law of nations every independent state possesses the exclusive right of police over all persons within its jurisdiction, whether upon its soil or in its vessels upon the ocean, and this national prerogative can only be interfered with in cases where acts of piracy are committed, which, by the public law of the world, are cognizable by any power seizing the vessel, thus excluded from the common rights of the ocean."

Mr. Cass, Sec. of State, to Mr. Dallas, Feb. 23, 1859. MSS. Instruc., Great Britain.

"Referring to the correspondence which has taken place concerning the case of Peter Martin, held in custody in British Columbia, and particularly to my notes of the 2d of November and the 6th of December last, I have now the honor to inform you that a dispatch has been received from the consul of the United States at Victoria, dated December 20, stating that Martin had been brought to trial for the assault charged against him, in a court of assize held at Victoria, on the 16th December ultimo, before the Hon. P. P. Crease, a justice of the supreme court of the province, and had been found guilty and sentenced to one year and nine months' imprisonment at hard labor, to take effect after the expiration of the term of imprisonment of fifteen months to which he was sentenced in September last.

"The consul, who was present at the trial, states that two witnesses, who were on the spot at the happening of the occurrence, testified that the assault occurred in what is considered to be Alaska territory, one locating the point near the Stickine River, eight or ten miles from its mouth, the other at a distance of some ten or twenty miles from its mouth, and that the judge, in charging the jury, referred at some length to the point of jurisdiction and to the fact that a question had been raised by this Government concerning the right of a court in the province to try the prisoner for an offense committed in Alaska and to correspondence between the two Governments, but stated to the jury that he would entirely disembarrass them on that point by saying that no evidence had been produced or could be produced to show that the offense for which the prisoner was on trial was really committed in Alaska, as the boundary between the two countries on the Stickine River remained undetermined, and no line of demarkation existed showing how far up that river American territory actually extends, whether it was five miles, ten miles, or thirty miles; and that, under these circumstances, the court had jurisdiction or concurrent jurisdiction, and the proceedings in trying the prisoner were just and proper.

"In the note originally addressed to you, under date of November 2, it was suggested that if it appeared that the assault was committed within the territory of the United States, Martin could not properly be tried for the offense with which he was charged, and that he should be set at liberty; and I had the honor to request that you would call the attention of Her Majesty's proper authorities to the case, that an examination of the facts might be made before the case was disposed of.

"The facts were laid before you, and while no unnecessary prominence was given to the violation of the sovereignty of the United States which had taken place, it was confidently hoped that before Martin was placed on trial for the new charge, or before any proceedings had been taken to continue his imprisonment on the former one, the facts would have been carefully examined by the colonial authorities and a conclusion reached as to what course should properly be taken, in view of the rights of Martin and of the sovereignty of the United States, which it was stated had been invaded, and it is a matter of regret that under the circumstances the court, with apparent knowledge of the facts, should have proceeded with the trial and have sentenced the prisoner, and assumed to decide questions having a serious bearing on the rights and jurisdiction of the two countries. Moreover, the position assumed by the learned judge who presided at the trial, if rightly reported, seems to be such as I feel quite confident will not be sustained by Her Majesty's Government.

"The absence of a line defined and marked on the surface of the earth as that of the limit or boundary between two countries cannot confer upon either a jurisdiction beyond the point where such line should in fact be. That is the boundary which the treaty makes the boundary. Surveys make it certain and patent, but do not alter rights or change rightful jurisdiction.

"It may be inconvenient or difficult in a particular case to ascertain whether the spot on which some occurrence happened is or is not beyond the boundary-line; but this is simply a question of fact, upon the decision of which the right to entertain jurisdiction must depend.

"I have the honor, therefore, to ask again your attention to the subject and to remark that if, as appears admittedly to be the fact, the colonial officers in transporting Martin from the place at which he was convicted to his place of imprisonment, via the Stickine River, did conduct him within and through what is the unquestioned territory of the United States, a violation of the sovereignty of the United States has been committed, and the recapture and removal of the prisoner from the jurisdiction of the United States to British soil was an illegal, violent, and forcible act, which cannot justify the subsequent proceedings whereby he has been, is, or may be, restrained of his liberty.

"I have, therefore, to express the hope that if Her Majesty's authorities find the fact to be as it is represented, that Martin was conducted by the officers having him in custody into and through the Territory of Alaska, being part of and within the jurisdiction and sovereignty of the United States, he be set at liberty.

"I must not allow this question to pass without entering an explicit dissent from the doctrine which seems to be advanced by the learned judge who presided at the trial of Martin, that jurisdiction or concurrent jurisdiction vests in Her Majesty's colonial authorities or courts over offenses committed within any part of the Territory of Alaska, even

though so near to the treaty-line that uncertainty or doubt may exist on which side of such line the offense is committed. It cannot, I think, be necessary to argue this point, or to do more than record this dissent and denial of a doctrine which, I have no doubt, Her Majesty's Government agrees with me in repudiating."

Mr. Fish, Sec. of State, to Sir Edward Thornton, January 10, 1877; MSS. Notes, Great Brit.; For. Rel., 1877. (See, for same correspondence, Brit. and For. State Papers, 1876-7, vol. 68.)

"On July 22, 1886, the telegram of Mr. Jackson, minister at Mexico, dated July 21, 1886, was received here, stating the refusal of the Mexican Government to accede to the telegraphic demand of the undersigned for Cutting's release, the substance of which telegram is appended. On the same day a summary of the reasons for so declining was asked for by telegraph, and on the same night a reply from Mr. Jackson was received, giving a summary of the Mexican reasons. The substance of this telegraphic summary is annexed, and the full text of Mr. Mariscal's refusal is found among the accompaniments to a later dispatch from Mr. Jackson—No. 272, of July 22, 1886.

"On July 26, 1886, Consul Brigham telegraphed to this Department that the governor of Chihuahua was pushing the trial of Cutting, who ignored the proceedings; copy of which telegram is appended.

"On July 27, 1886, the instruction of the undersigned, numbered 228, was mailed to Mr. Jackson; copy thereof is annexed.

"The last communication from Minister Jackson on the subject, being his dispatch No. 272, of July 22, 1886, hereinbefore referred to, was received at this Department on the 31st ultimo. It conveys the text of the correspondence had by him with the Mexican secretary for foreign affairs, in which Cutting's release was demanded and refused.

"In the interim since July 27, 1886, the undersigned has had several personal interviews with Mr. Matias Romero, the Mexican minister at this capital, whose desire for a satisfactory adjustment of this case has been manifested, but from whom the undersigned has procured no other information than is contained in the correspondence herein recited.

"A copy of article 186 of the Mexican code, which was handed to the undersigned by Mr. Romero in support of the claim of Mexico to take cognizance of crimes of which Mexicans were the subject in foreign countries, is herewith appended.

"This conflict of laws is even more profound than the literal difference of corresponding statutes, for it affects the underlying principles of security to personal liberty and freedom of speech or expression which are among the main objects sought to be secured by our frame work of Government.

"The present case may constitute a precedent fraught with the most serious results.

"The alleged offense may be—and undoubtedly in the present case

is—within the United States held to be a misdemeanor, not of high grade; but in Mexico may be associated with penal results of the gravest character. An act may be created by a Mexican statute an offense of high grade, which in the United States would not be punishable in any degree. The safety of our citizens and all others lawfully within our jurisdiction would be greatly impaired, if not wholly destroyed, by admitting the power of a foreign state to define offenses and apply penalties to acts committed within the jurisdiction of the United States.

"The United States and the States composing this Union contain the only forum for the trial of offenses against their laws, and to concede the jurisdiction of Mexico over Cutting's case, as it is stated in Consul Brigham's report, would be to substitute the jurisdiction and laws of Mexico for those of the United States over offenses committed solely within the United States by a citizen of the United States.

"The offense alleged is the publication in Texas, by a citizen of the United States, of an article deemed libelous and criminal in Mexico. No allegation of its circulation in Mexico by Mr. Cutting is made, and indeed no such circulation was practicable or even possible, because the arrest was summarily made on the same day of the publication in the English language in Texas, on the coming of the alleged writer or publisher into Mexico. And the Mexican correspondence accompanying Mr. Mariscal's refusal to release Cutting, found in the accompaniments to Minister Jackson's dispatch, No. 272, of July 22, 1886, shows that the 186th article of the Mexican code is the ground of the jurisdictional claim.

"Under this pretension, it is obvious that any editor or publisher of any newspaper article within the limits and jurisdiction of the United States could be arrested and punished in Mexico if the same were deemed objectionable to the officials of that country, after the Mexican methods of administering justice, should he be found within those borders.

"Aside from the claim of extraterritorial power, thus put forth for the laws of Mexico and extending their jurisdiction over alleged offenses admittedly charged to have been committed within the borders of the United States, are to be considered the arbitrary and oppressive proceedings which, as measured by the constitutional standard of the United States, destroy the substance of judicial trial and procedure, to which Mr. Cutting has been subjected."

Mr. Bayard, Sec. of State, Report to the President in Cutting's case, Aug. 2, 1886. MSS. Report book: Sen. Ex. Doc. No. 224, 49 Cong., 1 Sess. See further as to Cutting's case, *infra*, § 189.

The courts of the United States do not execute the penal laws of another country.

2 Op., 365, Berrien, 1830; see Whart. Conf. of Laws, § 4.

(6) FOREIGN SENDING OVER OF PAUPERS AND CRIMINALS FORBIDDEN.

§ 16.

The transport of paupers from Cuba to the United States is in violation of United States laws and of international comity.

Mr. Fish, Sec. of State, to Mr. Bernabé, May 16, 1872; MSS. Notes, Spain.

As to deportation of criminals, paupers, and insane persons from Europe, by the local authorities there, see President's message, February 28, 1881. (S. Ex. Doc. 62, Forty-sixth Congress, third session, 162.)

The act of Congress of 1862, authorizing the colonization of certain classes of persons of African derivation in tropical countries was conditioned on the assent of the country in which such colonization was proposed.

Mr. Seward, Sec. of State, to Mr. Molina, Sept. 24, 1862; MSS. Notes, Cent. Am.; Dip. Cor. 1862; *supra* § 11*a*.

As to the right of non-reception or expulsion of such persons, see *infra*, § 206.

XIV. *EXCEPTION AS TO NECESSITY.*

§ 17.

As will be seen more fully hereafter, intrusion on the territory or territorial waters of a foreign state is excusable when necessary for self-protection in matters of vital importance, and when no other mode of relief is attainable.

Infra, §§ 38, 50.

XV. *EXCEPTION AS TO FOREIGN SOVEREIGNS, FOREIGN MINISTERS, AND FOREIGN TROOPS.*

§ 17*a*.

"The perfect equality and absolute independence of sovereigns, and this common interest impelling them to mutual intercourse and an interchange of good offices with each other, have given rise to a class of cases in which every sovereign is understood to waive the exercise of a part of that complete, exclusive territorial jurisdiction which has been stated to be the attribute of every nation.

"First. One of these is admitted to be the exemption of the person of the sovereign from arrest or detention within a foreign territory. * * *

"Second. A second case, standing in the same principles with the first, is the immunity which all civilized nations allow to foreign ministers. * * *

"Third. A third case, in which a sovereign is understood to cede a portion of his territorial jurisdiction, is where he allows the troops of a foreign prince to pass through his dominions."

Marshall, C. J., Schooner Exchange v. McFaddon, 7 Cranch, 136.

As to passage of troops, see *supra*, § 13.

As to immunities of foreign ministers, see *infra*, § 92 *ff*.

As to immunities of national ships, see *infra*, § 36.

XVI. *EXCEPTION AS TO UNCIVILIZED LANDS.*

§ 17*b*.

In certain uncivilized or semi-civilized lands there is by force of treaty the right granted to the United States to establish a local consular judiciary to adjudicate questions in which citizens of the United States are concerned. (*Infra*, § 125.) The right, also, has been assumed to arrest in such lands fugitives from justice, or offenders against the Government of the United States.

See Mr. Seward, Sec. of State, to Mr. McMath, April 28, 1862; MSS. Inst. Barbary States; Dip. Corr., 1862. (See *infra*, § 268; Whart. Conf. of Laws, § 15.)

XVII. *DUTY OF SOVEREIGN TO RESTRAIN AGENCIES LIKELY TO INJURE ANOTHER COUNTRY.*

(1) PREDATORY INDIANS.

§ 18.

The right to pursue Indians across the border is discussed *infra*, § 50.

"It is apprehended that the Mexican Government is not well aware that although for a heavy pecuniary consideration it has released the United States from the obligations in respect to predatory incursions of Indians from this country into Mexico, the obligations of that Government in respect to similar marauders from that country into the United States are entire, as provided for both by public law and by treaty. The duty of that Government, therefore, at least to aid in restraining its savages from depredations upon us, seems to be clear. If this duty shall continue to be neglected we may be compelled in self-defense to disregard the boundary in seeking for and punishing those bandits."

Mr. Evarts, Sec. of State, to Mr. Foster, May 28, 1877. MSS. Inst., Mexico. (See Mr. Fish, Sec. of State, to Mr. Nelson, June 26, 1871; MSS. Inst., Mex., For. Rel., 1871.)

"Referring to the correspondence which has been exchanged between us in relation to the movements of the lately hostile Indians under the lead of Sitting Bull, I have now the honor to bring to your attention the substance of recent information received through the responsible agents of the Department of the Interior, and to invite earnest consideration of the important points thereby suggested.

"This Government has been informed that companies of hostile Indians from Sitting Bull's camp have been and are scattered about, in groups of lodges of varying numbers, throughout the entire northern part of the Indian reservation having Fort Peck, on the Poplar River, in Montana Territory, for its headquarters and agency. The peaceable resident Indians of the reservation have daily come into the agency

with bitter complaints of the encroachments of Sitting Bull's men on their special hunting grounds. They say that they find Uncapapas from Sitting Bull's camp everywhere, driving and scattering the buffalo and other game, and stealing their horses and running them over the boundary line, thus in every way diminishing the ability and opportunity of the agency Indians to maintain themselves. There is every reason to believe that Sitting Bull himself was, so late as the 19th ultimo, within the territory of the United States, and had been camped south of the boundary line since February last, and that practically all his Indians had crossed to the southward of our northern boundary, there being, as they claimed, no game for their subsistence on the Canadian side. This state of things naturally gives rise to disquietude, notwithstanding the later information communicated to me by you in a recent conference, that Sitting Bull and his chief lodges of warriors were at last advices again on British territory.

"It is true that these wandering movements of an irreconcilable and declaredly unfriendly Indian force from one side to the other of the frontier, do not indicate any determinate purpose, or any disposition even, on their part to abandon a residence under British protection, or to renew the state of warfare with the Government of the United States, whose active hostilities were only arrested by the refuge sought and afforded on the soil of a neighboring state. Yet the situation now existing on both sides of the border cannot but be regarded as one requiring the most urgent and careful attention of both Governments, lest by uncertainty as to the precise scope and definition of their obligations towards each other, and indecision in their treatment of the Indians domiciled within their jurisdiction, undue and unnecessary difficulties may grow out of the present attitude of these tribes which have, in the most formal manner possible to their savage state, renounced their rights in the one country and rejected terms of security, subsistence, and peace, to seek and receive asylum and residence in the other.

"Should these erratic movements continue, this Government may at any moment be brought face to face with the necessity of suppressing the marauding operations of the hostile Indians under Sitting Bull's lead, or even of resorting to active military operations to repel open attacks upon the lives and property of its own people.

"It has, as it conceives, a perfect right to regard as a menace to domestic peace and tranquillity the presence within its borders of a warlike body of disaffected Indians, who have explicitly defied its jurisdiction and by their own act embraced the protection of another power. It may be that, in the interest of the security and well being of both friendly Indians and white natives in the border-land, this Government may feel constrained to enforce submission upon those who, after openly denying its laws and power, and withdrawing them-

selves therefrom, may return within its jurisdiction, with or without apparent hostile intent. Should this Government decide to compel a submission of any of these Indians appearing on the southern side of the frontier line, it would look upon a new recourse for asylum across the line as calling for prompt and efficient action by the British Government to repulse them, or to disarm, disable, and sequestrate them under a due responsibility for them as a component part of the territorial population of the British-American dominion.

"The importance of a distinct understanding on this point is apparent. It is impossible to give countenance to any line of argument or assumption by which these savages may quit and resume allegiance and protection at will, by the mere circumstance of passing to the one side or the other of a conventional line traced through the wilderness. Before the era of hostilities began 'they were undoubtedly subject to the jurisdiction of the United States as much as the land they then occupied, and even though their migrations in peaceable search of food might, at times, carry them temporarily across the frontier, they were, therefore, none the less a part of the population of the United States, and alien to British rule. But when hostilities began, and the armed force of the United States was summoned to enforce their submission, they sought and received asylum and protection across the border. The significance of their acts of submission to British protection, as they themselves understood and intended them, admits of no doubt as to the extent of their intention to assume the character of inhabitants of British domain, and their belief that they had done so; and no act of Her Majesty's authorities in the North American possessions of Great Britain has looked toward denial of this rudely asserted right to British protection, and still less toward enforcement upon them of submission to the authority of the United States, or of subjecting them to the treatment usually observed toward revolted aliens on the territory of a friendly power.

"In this aspect of their relations to the British Government, this Government conceives that it is bound now to regard the Indians of Sitting Bull's command as British Indians. Should they therefore make incursions of a hostile character, and should their movements threaten the property, the domain, or the means of subsistence of the friendly Indian tribes of the United States dwelling peaceably on their assigned reservations, or should active military operations on the part of the United States against them become for any cause inevitable, I beg to call the attention of Her Majesty's Government to the gravity of the situation which may thus be produced, and to express a confident hope that Her Majesty's Government will recognize the importance of being prepared on the frontier with a sufficient force either to compel their surrender to our forces as prisoners of war, or to disarm and disable them from further hostilities, and subject them to such con-

straints of surveillance and subjection as will preclude any further disturbance of the peace on the frontier."

Mr. Evarts, Sec. of State, to Sir E. Thornton, May 27, 1879. MSS. Notes, Gr. Brit.; For. Rel., 1879.

It is the duty of the British Government to take such supervision of belligerent Indians as may prevent them from using British territory for purposes hostile to the United States.

Mr. Evarts, Sec. of State, to Sir E. Thornton, Feb. 5, 1881; MSS. Notes, Gt. Brit.; Mr. Blaine to Sir E. Thornton, May 26, 1881; Mr. Blaine to Mr. Drummond, Aug. 25, 1881

"No one can realize more than I the delicacy of relationship between two countries like ours, each of which is compelled to maintain control over savage tribes on its border; and the record of our correspondence for years past has shown how often the patience and forbearance of each Government has been tried by the hostile and predatory acts committed by those savages on both sides of the frontier.

"I observe that your note of the 20th, following the intimation of the memorandum of the Chihuahua representatives, suggests that a special treaty be concluded by which the United States would guarantee to disarm its Indians, and to endeavor to prevent them from disposing, within the United States, of booty taken in Mexico. My impressions are that stringent provisions in each Republic rendering it as far as possible impracticable for the Indians to dispose of their booty in the territory of the other would be a salutary measure. The treaty relations between the two Governments need to be considered in the broadest and most liberal spirit, and the consular and commercial conventions which heretofore existed between the two Governments protecting the rights of American citizens in Mexico restored.

"You will, of course, see that while we are without a convention defining consular privileges and without any agreement fixing the rights of American citizens and capital in Mexico, the relations of the two countries are more or less exposed to unforeseen contingencies.

"Believing, as I do, that a proper exercise of vigilance and control over the hostile Indians on both sides of the frontier is very necessary to the interests of the two countries, I will be ready at any time to cooperate with you in agreeing upon measures to effect that end."

Mr. Frelinghuysen, Sec. of State, to Mr. Romero, April 9, 1883; MSS. Notes, Mex., For. Rel., 1883; see also same to same, April 10, 1883, *id.*

"I have the honor to apprise you of the receipt of a letter of the 6th instant from Hon. H. M. Teller, Secretary of the Interior, covering a report made to him by Mr. H. Price, Commissioner of Indian Affairs, touching the alleged recent invasion of the Mexican State of Sonora by Apache Indian from the San Carlos Reservation in Arizona Territory.

This complaint of the Mexican Government was based upon certain allegations of the Mexican consul at Tombstone, founded mainly upon newspaper reports, and formed the subject of your note to me of the 22d ultimo.

"Mr. Price's information is obtained from persons who have a personal supervision of the San Carlos Indians, and is to the effect that none of them have recently left the reservation. He states that frequent reports made to that office by agents at San Carlos, and which are believed to be perfectly trustworthy, show that the Apaches there have been carefully watched, and that all, without exception, are peaceable, well disposed, and manifest not the least sign of dissatisfaction, but that, on the contrary, their leaders and most influential men express a desire to fight the renegades from the reservations. Mention is also made of a recent dispatch to the Department of the Interior from General Crook, in command of the Department of Arizona, in which it is stated that the Indians who have committed the depredations complained of in Mexico are a small band known as Chiricahua Apaches on their way back from Old Mexico, where they have been living for more than a year past. These Indians are understood to be a troublesome lot, and General Crook, it is stated, promises to do all that he can to exterminate them. That officer's dispatch also alleges that the agency Indians are behaving well, not one having left the San Carlos Reservation, and that their assistance can be relied upon in case of the return of the Chiricahuas.

"It will be perceived that these statements not only confirm and strengthen those contained in my note to you of the 10th instant upon the same subject, but demonstrate that the San Carlos Indians should not be held accountable for any outrages which have been recently committed in Mexico as alleged. Neither is it thought that the Mexican Government can now question the means instituted by the United States to preserve peace among those Indians or its sincerity in restraining and keeping them within proper bounds. Concerning the Chiricahua Apaches, it is not doubted that they, in connection with renegade Indians of like character belonging to Mexico, have been operating with more or less success on both sides of the border, to the injury of life, person, and property of Americans and Mexicans, citizens alike; or that the extermination or subjugation of those Indians would do much to restore a degree of peace and security perhaps not now enjoyed upon the border of either country. The Mexican Government may confidently rely upon the adoption by the United States of whatever measures may be necessary or possible to rid its citizens of these renegade Chiricahuas should they reappear upon our territory, or the authorities of this Government will gladly act in harmony with those of the Government of Mexico in endeavoring to successfully control a common enemy

whose predatory raids are a constant source of disquiet to the inhabitants along the borders."

Mr. Frelinghuysen, Sec. of State, to Mr. Romero, April 16, 1883. MSS. Notes, Mex., For. Rel., 1883.

Mr. Seward's report of Jan. 29, 1864, as to the correspondence with the authorities of Great Britain in relation to the proposed pursuit of Indians into the Hudson Bay territories, is given in Senate Ex. Doc. No. 13, 38th Cong., 1st sess.

See House Ex. Doc. No. 207, 43d Cong., 1st sess; House Rep. No. 343, 44th Cong., 1st sess.; House Mis. Doc. No. 37, same sess.

On October 5, 1885, Mr. Jackson, minister to Mexico, was instructed to renew the extension for two years of the agreement between the United States and Mexico for the reciprocal crossing the border of troops when in pursuit of Indian marauders.

See Mr. Bayard, Sec. of State, to Mr. Jackson, Oct. 5, 6, 1885. MSS. Inst., Mex.

By a dispatch dated October 17, 1885, Mr. Jackson informed the Department that the above agreement had been extended to November 1, 1886.

(2) OTHER MARAUDERS.

§ 19.

The right to pursue marauders across the border is discussed, *supra*, § 18; *infra*, § 50.

"The accountability of the Mexican Government for the losses sustained by citizens of the United States from the robbery and exactions committed at Guaymas, in May last, by the armed force under the command of Fortino Viscaino, seems to be unquestionable. That person was a subordinate of Placido Vega, as appears by the orders of the latter to him, dated at Teacapan the 18th of May. Those orders directed Viscaino to proceed in the vessel (meaning the Forward) and perpetrate the very acts complained of. The orders were fulfilled. It is true that Mr. Sisson, the United States consular agent at Mazatlan, in his letter to you of the 13th of June, represents that since the evacuation of Mexico by the French the Government of that Republic had had no other authority in the canton of Tepic, where the expedition of the Forward was organized and whence it proceeded, than that connived at by one Manuel Lozada, of whom Placido Vega is supposed to have been an instrument. Mr. Sisson, however, acknowledges that the General Government had appointed a collector and other officers in that quarter, but adds that they are creatures of Lozada. He also says that he had been informed by General Davalos, the commander at Mazatlan, and by Mr. Sessalveda, the inspector of the customs there, that the General Government had directed that its troops must not invade the territory of Lozada. Whether this be a fact or not, that Government, so long as it shall claim jurisdiction over that territory, must be held responsible for any injuries to citizens of the United States, there

or elsewhere, by any force which may have proceeded from the same territory.

"In times of peace redress for such injuries may, in the first instance at least, be sought through the judicial tribunals of the country where they may have been committed. When, however, they are silenced or overawed by the force of arms, it seems a mockery to be referred to them, especially if there should be any ground for the charge that the Mexican Government has willfully connived at a defiance of its authority in the canton of Tepic."

Mr. Fish, Sec. of State, to Mr. Nelson, Nov. 16, 1870. MSS. Inst., Mex., For. Rel., 1871. (See, also, same to same, Dec. 12, 1870, *Id.*; March 29, 1871, *Id.*; Mr. Davis to Mr. Nelson, Sept. 6, 1871, *Id.*; Mr. Fish to Mr. Nelson, April 13, 1872, *Id.*, For. Rel., 1872.)

"Your dispatch No. 279, of the 4th instant, relative to Mexican raids in Texas, has been received. The assurances of a disposition on the part of that Government to check them, which have been given to you by Mr. Lafragua, are satisfactory, so far as they go. Those maraudings, however, have of late been so frequent, bold, and destructive, that they have occasioned much excitement in the public on this side the river, which will probably lead to an expectation that acts on the part of that Government will show the sincerity of its professions. We are informed that a few of the raiders have been arrested on the Mexican side, and that probably they are on the way to the capital for trial. It is hoped that, if the proof should warrant their conviction, they will receive a full measure of punishment according to law, so that their fate may serve as an example for deterring imitators.

"I am aware of no purpose here of acquiring an extension of territory on that frontier. If, however, as has been suggested to us, that Government is embarrassed by the risk of desertions in sending a regular force to that quarter, it might not be indisposed to allow United States troops to cross and temporarily occupy the territory whence the raiders are in the habit of coming. The tract for such occupation might be embraced in a line drawn from Matamoras to Laredo. You will consequently sound the minister for foreign affairs on this point, and report the result.

"It may be regarded as frivolous to seek to justify the hostile incursions into our territory on the ground of retaliation for similar excursions from this side. There have been none such, and proof of the contrary is challenged. Indeed, the charge is improbable on its face, from the fact that Mexico, near the border, holds out no temptation to plunderers from this side, while the reverse is the case in respect to baits in Texas for Mexicans."

Mr. Fish, Sec. of State, to Mr. Foster, May 20, 1875. MSS. Inst., Mex., For. Rel., 1875.

"Information of a most reliable character has reached this Department of the continued depredations of the Mexican citizens of Ximenes

and the neighborhood, under the head of one Areola, upon the Texan border. It is reported on the best authority that the officer in command of the Mexican troops at Piedras Negras is not merely cognizant of the repeated thefts of American cattle, but that he positively protects the raiders, furnishing them with arms on occasion, and is moreover a receiver to a large extent of the stolen property, feeding his troops, even, upon the beef.

* * * * * * *

"Upon such a statement of facts (which for sufficient reasons is not made more definite) there can exist no reasonable doubt that the central authority of Mexico should find it feasible even in the absence of supplementary information to pursue and rigorously punish these particular offenders.

"You are requested to bring this matter to the immediate attention of the Mexican Government, making evident the earnestness with which the Government of the United States presses these facts upon its serious attention, to the end that more deplorable events may not follow.

"It will, of course, be natural that in due course of time certain of those citizens of the United States who have been despoiled of their property by the citizens of Mexico will seek reclamation, and if some satisfactory recognition of the obligation of the Mexican Government to amply provide for such contingencies should be obtained, it might perhaps afford a greater facility to the future adjustment of these cases. But you will take care to have it understood that a mere provision for pecuniary redress in this connection will by no means be regarded as in anywise a satisfaction for other than the actual losses which have been sustained. The continued harassing and apparently ceaseless turmoil which is kept up on our otherwise peaceful borders by these marauding parties of Mexicans, which, crossing secretly and in the darkness of the night from their own territory, emerge upon the farms and fields of American citizens, carrying perpetual alarm and dread, and rendering life in that region of our country well nigh insupportable, is not to be weighed in any common pecuniary scale. The reclamation sufficient to meet the results of a series of raids, worse in their effects than an absolute invasion in time of war, can be no ordinary one.

"You will present the views of the Government of the United States on the subject of these repeated outrages upon our citizens in this light in order that the sense entertained of the magnitude of the offenses committed may not be underrated nor misunderstood."

Mr. Evarts, Sec. of State, to Mr. Foster, Sept. 20, 1878. MSS Inst., Mex.; For. Rel., 1878.

"Referring to your note of the 31st of July last, in relation to certain statements made to you by the Mexican consul at San Antonio, Tex., in reference to the organization of revolutionary forces in Texas for the purpose of invading Mexico, I have the honor to inform you that a let-

ter has been received from the Secretary of War, communicating a copy of a report from Captain Sellers, commanding officer of Fort McIntosh, Texas, in which he states that he has no knowledge of any revolutionary bands having been organized at Laredo, or that General Garza Ayala and Santos Benavides have been in charge of any arms, or that they have furnished any to rebels, or that forty men left Laredo equipped by Santos Benavides, as was alleged; neither has he any knowledge of any parties of rebels organizing in that vicinity in full view of Texan authorities, or of any cattle having been stolen from Mexico and driven to this side, as was also represented, although he has used every means to ascertain the truth; that if Santos Benavides or others have been engaged in enlisting such men as is represented, it has been done so quietly that none but those concerned know anything about it, and that if Santos Benavides, as is also represented, had addressed a party of rebels at Laredo, promising them to turn over the town of New Laredo to pillage, &c., it is almost certain that the War Department would have been informed of the fact. He adds, there is no doubt that Santos Benavides and his brothers are strong adherents of Lerdo, and that he heard that arms were consigned to them for the revolutionists, but has never been able to obtain any facts in regard to it; that New Laredo has had its representatives in Laredo to watch any revolutionary movement, and if the alleged occurrences were reported by them to the proper authorities he has no knowledge of the fact.

"In reference to the reported crossing the frontier on the 25th May by the revolutionary bands, he had made inquiry of General Sykes, commanding the district of the Rio Grande, who stated that he knew nothing of such crossing, and as to the accusation made against Mr. Adams, he is confident that it is a slander, and that, in his opinion, the report was made by Santiago Sanchez, between whom and Mr. Adams there was a personal quarrel; that Isidore Salinas and Pablo Quintana are doubtless guilty of all charged to them, and might have been arrested long ago if the Mexican authorities wanted them; that he has frequently advised the proper authorities of New Laredo to make complaints against Salinas and other revolutionists before the United States commissioner at this place, in order that they could be arrested when found here, and that he was informed by the county judge of Webb County that the latter had never been applied to, either personally or officially, by the Mexican authorities, to arrest revolutionists or rebels. * * *

"I transmit the information thus received, believing that you will recognize in it a complete exculpation of the authorities of this Government upon the frontier, inasmuch as the facts thus presented seem to show a lukewarmness and inefficiency on the Mexican side in singular contrast with the loyal and frank manner in which the officers of the United States have attempted to fulfill the international duty resting upon them to contribute by all the effective means in their power to the

preservation of order and the repression of lawless force. It is to be regretted that their efforts were not promptly responded to in the same spirit as that in which they were made."

Mr. Evarts, Sec. of State, to Mr. Zamacona, Oct. 30, 1878. MSS. Notes, Mex., For. Rel., 1878.

As to duty of the Dominion Government to repress wreckers on the lakes, see Mr. Evarts, Sec. of State, to Sir E. Thornton, June 13, 1879. MSS. Notes, Gr. Brit.; For. Rel., 1879.

"I have the honor to acknowledge the receipt of your note of the 8th instant in reference to the proceedings of a mob near Willcox, Pima County, Arizona, which resulted in the hanging of one man and the mysterious disappearance of another, who was held a prisoner in the hands of those engaged in the outrage, and I also acknowledge the receipt of your notes of the 15th and 18th instant, respectively, both referring to cases of plunder by marauding bands, unfortunately so common to both sides of the border between the two Republics.

"Replying to these several notes I do myself the honor to state for your information, and for that of the Government you so worthily represent, that I have addressed a letter to the governor of Arizona, inclosing a copy of each of the notes in question and requesting him to institute an investigation, under the direction of the United States district attorney or such other Federal officer as he, the governor, might deem proper to select, into all the facts and circumstances of the affair in Pima County, and urging upon his excellency at the same time the importance of using every available means within the power of the Territorial executive authorities to have the instigators and perpetrators of the outrage discovered and brought to trial.

"In this same communication Governor Frémont was requested and earnestly urged to adopt such measures as, in his judgment, might prove most effective in promoting increased vigilance on the part of the local authorities of the border counties of Arizona, with a view to the suppression of these lawless raiding parties who appear to be organized on each side of the boundary line for purposes of robbery and indiscriminate plunder.

"The fact is too well authenticated to be unknown to the Mexican Government, as it is well known to this, that these bands are generally, if not altogether made up of Mexicans and Americans who give themselves no care as to the nationality of their comrades in crime, and entertain a common disregard for the laws of either country.

"While these conditions exist it is only by corresponding vigilance of the authorities on either side of the line that a suppression of these marauding bands can be hoped for. I can give you the assurance that no effort will be spared by this Government which may give promise of that result."

Mr. Blaine, Sec. of State, to Mr. Zamacona, Aug. 20, 1881. MSS. Notes, Mex.; For. Rel., 1881.

"The feasibility of adopting specific measures for the prevention of lawless incursions upon either side of the Rio Grande is a subject, I beg to assure you, which has not failed of earnest attention by this Government as well as by the authorities of the State of Texas and the adjacent Territories; and while any proposition for summary Government action which contemplates individual restraint for precautionary rather than penal cause must encounter objections of serious weight, such objections have no place in the established or suggested systems, which, aiming at regular defined and ascertained offenses, seek indirectly to deter from other and more grievous crime.

"Hence, upon the presentation of the subject by Mr. Romero's note of January 20 and April 11 last, the Department took means to ascertain more accurately the extent to which the purpose of preventing these too frequent expeditions was represented in the enactments governing the districts upon this side of the border, and I am gratified now to be able to communicate the general character of the information obtained.

"It has long been manifest that plunder was a principal motive for the excursions which have emanated either from Mexico or the United States, and, recognizing the impracticability of restraining completely the departure or return of evil-minded persons across a border of such considerable extent, the efforts of the legislature have been to so increase the difficulties of realizing profits from unlawfully acquired property that the attempts to obtain such property would lessen.

"Accordingly, and auxiliary to proceedings against the actual offender, the legislatures of the two Territories have made ample and exceptional provisions affecting the receivers or sellers of stolen property. In Arizona these withdraw from the possessor, though innocent, any security of title against the original owner, and if the latter follows his property with reasonable proof he can thus always recover it by judicial assistance. So, too, these statutes are particularly considerate of the safety of all live property, which is peculiarly a subject of plunder, and by heavy penalties require the branding system and guard against any but notable and formal alteration of the marks, and by many severe restrictions tend to render difficult and improbable any but open and lawful dealings in this important species of property.

"In New Mexico the larceny of a branded animal is a felony, without reference to its value, and in Arizona such offense is grand larceny, as may be that of the receivers. In neither is it considered that these and other provisions would be inapplicable in the case of property stolen in Mexico and brought across the border.

"I am uninformed as to whether the neighboring States of Mexico have enactments of equal extent, but presume that the similarity of occupations, interests, and necessity have prompted measures in this direction, and while existing facilities in this country may prove not entirely adequate to preventing the evils in question, they seem a vig-

orous attempt, and if individual instances under these laws were resolutely prosecuted, with the aid of those wronged, the hazard of theft should constantly increase and in that proportion would its attempts be avoided. As illustrating the readiness and desire of the people of this country to make use of any new expedient seemingly adapted to the repression of this organized plundering, I beg to refer to a letter recently submitted here from the acting governor of Arizona.

"In counseling upon the subject he remarks: 'I think a mounted police or military force should be posted in such manner as to guard the passes between the mountains on the border through which stolen cattle are driven and through which smugglers and raiding Indian bands pass to and from Mexico,' and adds that this opinion, which is shared by all intelligent men of the Territory, had expression in a bill introduced at the late session of the legislature, but too late for final action.

"Should it prove possible for the frontier States to supplement their existing laws with direct measures of the above nature, it might confidently be expected, in conjunction with a similar system in Mexico, that conditions which have so long and persistently threatened the population of both countries would be speedily and favorably affected."

Mr. Frelinghuysen, Sec. of State, to Mr. Romero, Sept. 15, 1883. MSS. Notes Mex.; For. Rel., 1883.

As to duty of Mexico to punish or extradite marauders on territory of the United States, see further, Mr. Evarts, Sec. of State, to Mr. Foster, Dec. 7, 1877. MSS. Inst. Mex.; For. Rel., 1878. Mr. F. W. Seward, Acting Sec. of State, to Mr. Foster, Jan. 15, 1879. MSS. Inst. Mex.; For. Rel., 1879.

(3) DIVERSION OR OBSTRUCTION OF WATER.

§ 20.

"I transmit herewith, for your information in the premises and for your guidance in any future action that may be indicated to you, should any such appear to be necessary, a copy of a letter of the 10th ultimo, together with its various inclosures, from the governor of the State of Texas, asking the intervention of the General Government in a matter of vital importance to the citizens of that State living on the eastern shore of the Rio Grande.

"The inclosures, as you will see, consist of the statement of the county judge of El Paso County and petitions signed by prominent citizens of San Elizario and Socorro.

"The ground of complaint, as alleged, is that the Mexicans engaged in agricultural pursuits on the Mexican shore of the river are in the habit of diverting all the water that comes down the river during the dry season into their ditches, thereby preventing our citizens from getting sufficient water to irrigate their crops.

"This, if true, would be in direct opposition to the recognized rights of riparian owners, and if persisted in must result in disaster and ruin

to our farming population on the line of the Rio Grande, and might eventually, if not amicably adjusted through the medium of diplomatic intervention, be productive of constant strife and breaches of the peace between the inhabitants of either shore.

"I have addressed a note to the Mexican minister at this capital, requesting him to bring the matter to the attention of his Government, with a view to obtaining, if possible, alleviation from these annoyances.

"You will, therefore, investigate the matter as carefully and thoroughly as possible, and will report the result to the Department, when, should the facts be found to bear out the allegations set forth in the inclosed correspondence, further action will be taken in the premises."

Mr. Evarts, Sec. of State, to Mr. Morgan, June 12, 1880. MSS. Inst., Mex.; For. Rel., 1880.

"I have the honor to solicit your most earnest attention to a matter of vital importance to the citizens of the State of Texas engaged in agricultural pursuits on the eastern shore of the Rio Grande.

"A statement of the facts as alleged is given in inclosed copies of correspondence, consisting of a letter addressed to the Secretary of State by the governor of Texas, and the inclosures therein contained, being the statement of the county judge of El Paso County and petitions signed by several hundred citizens of San Elizario and Socorro.

"The trouble complained of appears to be the result of the action of the Mexican population on the western shore of the river in diverting, into ditches dug for that purpose, the small quantity of water that finds its way down during the dry season, thereby totally depriving the agriculturists on the eastern or Texan shore of the means of irrigating their crops, and thus cutting off their sole means of livelihood. As this is not only in direct opposition to the recognized rights of riparian proprietors, but is also contrary to that good feeling and harmony which ought to exist between colaborers in peaceful pursuits, and might, moreover, if permitted to continue, result in bitter feeling and possible breaches of the peace, I most earnestly request, in these high interests, that you will have the goodness to bring the matter to the attention of your Government with a view to procuring a cessation of the annoyance complained of.

"I shall be happy to co-operate with you in any way tending to produce the desired result, and have, to that end, already instructed the minister of the United States at Mexico to put himself in communication with your Government on the subject, and should the facts prove, upon investigation, to be as stated, to endeavor to have the injustice complained of put an end to."

Mr. Evarts, Sec. of State, to Mr. Navarro, June 15, 1880. MSS. Notes, Mex.; For. Rel., 1880.

The erection of works on the Meduxnikik River in New Brunswick in such a way as to obstruct the flow of water in Maine, and to in-

jure the lumbering business in that State, is a proper subject for diplomatic interposition by this Government.

Mr. Frelinghuysen, Sec. of State, to Mr. Lowell, May 16, 1884. MSS. Inst., Great Britain.

A party doing an injury in one State to a water-power running into another State, may be proceeded against in civil suit in either State in which he may be served with process; though proceedings *in rem*, by way of injunction or indictment to compel abatement, can only be brought in the jurisdiction in which the nuisance exists.

See 6 Crim. Law Mag., 169; Stillman *v.* Man. Co., 3 Wood. and M., 538; Foot *v.* Edwards, 2 Blatch., 310; Miss. and Mo. R. R. *v.* Ward, 2 Black, 485; Wooster *v.* Man. Co., 31 Me., 246; *In re* Eldred, 46 Wis., 530; Thayer *v.* Brooks, 17 Ohio, 489; Armendiaz *v.* Stillman, 54 Tex., 623.

XVIII. *WHEN HARM IS DONE BY ORDER OF FOREIGN SOVEREIGN, SUCH SOVEREIGN IS THE ACCOUNTABLE PARTY.*

§ 21.

There is no question that this rule holds good where the injury in question is done by a foreign sovereign's order, or by his officers, on the high seas.

Infra, §§ 227, 228.

Nor is there any question that when such injury is done on land as part of a warlike attack, the sovereign is responsible; though the party acting under his directions is responsible under the laws of war.

1 Op., 81, Lee, 1797, *infra*, §§ 223, 224.

But when the agent of a sovereign with whom we are at peace enters our territory and there inflicts an injury, whether such agent can set up in bar of a prosecution that he acted under his sovereign's orders, is a question that was much discussed in connection with the trial in New York of McLeod, in 1841, for the murder, some years before, of a person killed in the attack on the Caroline, in the port of Schlosser, in New York. The Caroline was in the employ of insurgents attempting the overthrow of the Canadian Government; and the attack was made on her by Canadian authority, the invasion of the territory of the United States being excused on the ground of necessity.

See as to question of necessity, *infra*, § 50.

To this case the following extracts relate:

"That an individual forming part of a public force and acting under the authority of his Government, is not to be held answerable as a private trespasser or malefactor, is a principle of public law sanctioned by the usages of all civilized nations, and which the Government of the United States has no inclination to dispute. This has no connection whatever with the question whether in this case the attack on the Caroline was, as the British Government thinks, a justifiable employment of

force for the purpose of defending the British territory from unprovoked attack, or whether it was a most unjustifiable invasion in time of peace of the territory of the United States, as this Government has regarded it. The two questions are essentially different, and while acknowledging that an individual may claim immunity from the consequences of acts done by him, by showing that he acted under national authority, this Government is not to be understood as changing the opinions which it has heretofore expressed, in regard to the real nature of the transaction which resulted in the destruction of the Caroline. That subject it is not necessary for any purpose connected with this communication to discuss. The views of this Government in relation to it are known to that of England, and we are expecting the answer of that Government to the communication which has been made to it.

"All that is intended to be said at present is, that the attack on the Caroline is avowed as a national act, which may justify reprisals or even general war if the Government of the United States, in the judgment which it shall form of the transaction and of its own duty, should see fit so to decide, yet that it raises a question entirely public and political, a question between independent nations, and that individuals connected in it cannot be arrested and tried before the ordinary tribunals as for the violation of municipal law. If the attack on the Caroline was unjustifiable, as this Government has asserted, the law which has been violated is the law of nations, and the redress which is to be sought is the redress authorized in such cases by the provisions of that code."

Mr. Webster, Sec. of State, to Mr. Crittenden, 15 March, 1841. MSS. Dom. Let.

"This Government has admitted that for an act committed by the command of his sovereign, *jure belli*, an individual cannot be responsible in the ordinary courts of another state. It would regard it as a high indignity if a citizen of its own, acting under its authority and by its special command in such cases, were held to answer in a municipal tribunal, and to undergo punishment as if the behest of his Government were no defense or protection to him.

"But your lordship is aware that, in regular constitutional governments, persons arrested on charges of high crimes can only be discharged by some judicial proceeding. It is so in England; it is so in the colonies and provinces of England. The forms of judicial proceeding differ in different countries, being more rapid in some and more dilatory in others, and, it may be added, generally more dilatory, or at least more cautious in cases affecting life, in governments of a strictly limited than in those of a more unlimited character. It was a subject of regret that the release of McLeod was so long delayed. A State court, and that not of the highest jurisdiction, decided that, on summary application, embarrassed as it would appear by technical difficulties, he could not be released by that court. His discharge, shortly afterwards, by a jury to whom he preferred to submit his case, rendered

unnecessary the further prosecution of the legal question. It is for the Congress of the United States, whose attention has been called to the subject, to say what further provision ought to be made to expedite proceedings in such cases; and, in answer to your lordship's question towards the close of your note, I have to say that the Government of the United States holds itself not only fully disposed but fully competent to carry into practice every principle which it avows or acknowledges, and to fulfill every duty and obligation which it owes to foreign governments, their citizens or subjects."

Mr. Webster, Sec. of State, to Lord Ashburton, Aug. 6, 1842. MSS. Notes. Great Britain.

Mr. Calhoun, on June 11, 1841, when the position taken by the British Government in McLeod's case was under discussion in the Senate, stated that position to be "that where a government authorizes or approves of the act of an individual it makes it the act of the government, and thereby exempts the individual from all responsibility to the injured country," which principle, Mr. Calhoun went on to say, was accepted by the Secretary of State, Mr. Webster. This principle Mr. Calhoun controverted. "The laws of nations," he said, "are but the laws of morals, as applicable to individuals, so far modified, and no further, as reason may make necessary in their application to nations. Now, there can be no doubt that the analogous rule, when applied to individuals, is that both principal and agents, or, if you will, instruments, are responsible in criminal cases; directly the reverse of the rule on which the demand for the release of McLeod is made. * * * Suppose that the British or any other Government, in contemplation of war, should send out emissaries to blow up the fortifications erected for the defense of our great commercial marts, * * * would the production of the most authentic papers, signed by all the authorities of the British Government, make it a public transaction, and exempt the villains from all responsibility to our laws and tribunals? Or would that Government dare to make a demand for their immediate release? Or, if made, would ours dare to yield to it and release them? * * * But setting aside all supposititious cases, I shall take one that actually occurred, that of the notorious Henry, employed by the colonial authority of Canada to tamper with a portion of our people, prior to the late war, with the intention of alienating them from their Government and effecting disunion in the event of hostilities. Suppose he had been detected and arrested for his treasonable conduct, and that the British Government had made the like demand for his release on the ground that he was executing the orders of his Government, and was not, therefore, liable personally and individually to our laws and tribunals. I ask, would our Government be bound to comply with the demand?" Mr. Calhoun, after accepting the position taken by Mr. Webster, that the case was not one of war, proceeded to say that the attack on the Caroline was an invasion of the territorial sovereignty of the United

States not justified by necessity, and that persons concerned in such attack were responsible to the State of New York for the wrongs done by them in it.

3 Calhoun's Works, 618. (See, further, on the whole question, 3 Lawrence, Com. droit. int., 430.)

To admit to its full extent the principle that we cannot subject to our municipal laws aliens who violate such laws under direction of their sovereigns, would be to give such sovereigns jurisdiction over our soil, and to surrender *pro tanto* our territorial sovereignty. The British demand for the surrender of McLeod can only be sustained on the ground that the attack on the Caroline was excusable on the plea of necessity.

See, further, *infra*, § 50c.

"Then the violence and bad spirit displayed in America have produced no small consternation here, though everybody goes on saying that a war between the two countries and for so little cause is impossible. It does seem impossible, and the manifest interest of both nations is opposed to it; but when a country is so mob-governed as America, and the Executive is so destitute of power, there must be great danger. However, the general conviction is, that the present exhibition of violence is attributable to the malignity of the outgoing party, which is desirous of embarrassing their successors, and casting on them the perils of a war or the odium of a reconciliation with this country, and strong hopes are entertained that the new government will be too wise to fall into the snare that is laid for them, and strong enough to check and master the bad spirit which is rife in the Northern States. The real difficulty arises from the conviction here, that in the case of McLeod we are in the right, and the equally strong conviction there that we are not, and the actual doubt on which side the truth lies. Senior, whom I met the other day, expressed great uncertainty, and he proposes and has written to Government on the subject, that the question of international law shall be submitted to the decision of a German university—that of Berlin, he thinks, would be the best. This idea he submitted to Stevenson, who approved of it, but the great difficulty would be to agree upon a statement of facts. Yesterday Lord Lyndhurst was at the council office, talking over the matter with Sir Herbert Jenner and Justice Littledale, and he said it was very questionable if the Americans had not right on their side; and that he thought, in a similar case here, we should be obliged to try the man, and if convicted, nothing but a pardon could save him. These opinions, casting such serious doubts on the question of right, are at least enough to restrain indignation and beget caution."

Greville's Memoirs, March 12, 1841, vol. 1, second series.

Portions of the correspondence with Great Britain in respect to the Caroline and the imprisonment of McLeod will be found in the British and Foreign State Papers for 1837-'38, vol. 26, 1373; 1840-'41, vol. 29, 1126.

For preliminary correspondence, see Mr. Forsyth, Sec. of State, to Mr. Stevenson, March 12, 1838; MSS. Inst., Gr. Brit.; Mr. Webster, Sec. of State, to Mr. Fox, April 24, 1841; MSS. Notes, Gr. Brit.

As concurring with Mr. Calhoun may be cited Dr. Lieber; Lieber's Life, 140; Mr. Benton, 2 Benton's Thirty Years, &c., 437. (See, also, 11 John Quincy Adams's Mem., 25; 4 Bost. Law Rep., 169; McLeod's Trial, by Gould, pamp.; Neilson's Choate, 215; 1 Am. Law Mag., 348; Globe newspaper, 1841, App., 422; Lawrence, Com. sur droit int., III, 430; 18 Alb. L. J., 506; 1 Op. Att'y Gen., 45, Bradford, 1794; same vol., 81, Lee, 1797; Phillips *v.* Eyre, L. R. 6 Q. B. 1, 24.)

The proceedings are reported in People *v.* McLeod, 25 Wend., 596. (See review by Judge Tallmadge, 26 Wend., 603, Append.)

General Halleck (1 Int. Law, Baker's ed., 431), in discussing McLeod's case, says: "As McLeod was *acquitted* on this trial, there was no opportunity to obtain, by appeal to the Federal courts, an opinion of the highest tribunal of the United States on this important question, *and the subsequent act of Congress has obviated all danger of the recurrence of a similar case.* The opinion of Mr. Justice Cowen, however, seems not to have received the approbation of the best judicial minds of his own State, and to have been very generally condemned in other States and by the political authorities of the Federal Government." And he goes on to say that "among European writers on public law there seems to be a general unanimity of opinion" sustaining Mr. Webster's view. But the act of Congress which General Halleck cites does not settle the law, but only indicates a way in which such cases may be reached by the Federal courts.

Sir R. Phillimore (3 Int. Law, 3d ed., 1885, 60) appears to accept Mr. Webster's conclusions, but, unaware of the Federal legislation that succeeded the trial, comments on the inadequacy of the Federal system to meet cases of this class.

Mr. Hall (Int. Law, § 102) cites Mr. Webster's conclusions without dissent, and declares that "when a state in the exercise of its right of self-preservation, does acts of violence within the territory of a foreign state, while remaining at peace with it, its agents cannot be tried for the murder of persons killed by them, nor are they liable to a civil action in respect to damages to property which they may have caused."

The statute to which the McLeod case gave rise, and which allows an appeal to the Federal courts in cases of the same class, is incorporated as follows in the Revised Statutes:

SEC. 752. The several justices and judges of the said [Federal] courts, within their respective jurisdictions, shall have power to grant writs of habeas corpus for the purpose of an inquiry into the cause of restraint of liberty.

24 Sept., 1789, c. 20, s. 14, v. 1, p. 81; 10 April, 1869, c. 22, s. 2, v. 16, p. 44; 2 Mar., 1833, c. 57, s. 7, v. 4, p. 634; 5 Feb., 1867, c. 28, s. 1, v. 14, p. 385; 29 Aug., 1842, c. 257, s. 1, v. 5, p. 539.

SEC. 753. The writ of habeas corpus shall in no case extend to a prisoner in jail, unless where he is in custody under or by color of the authority of the United States, or is committed for trial before some court thereof; or is in custody for an act done or omitted in pursuance of a law of the United States, or of an order, process, or decree of a court or judge thereof; or is in custody in violation of the Constitution or of a law or treaty of the United States; or, being a subject or citizen of a foreign state, and domiciled therein, is in custody for an act done or omitted under any alleged right, title, authority, privilege, protection, or exemption claimed under the commission, or order, or sanction of any foreign state, or under color thereof, the validity and effect whereof depend upon the law of nations; or unless it is necessary to bring the prisoner into court to testify.

24 Sept., 1789, c. 20, s. 14, v. 1, p. 81; 2 Mar., 1833, c. 57, s. 7, v. 4, p. 634; 5 Feb., 1867, c. 28, s. 1, v. 14, p. 385; 29 Aug., 1842, c. 257, s. 1, v. 5, p. 539. *Ex parte* Dorr, 3 How., 103; *Ex parte* Barnes, 1 Sprague, 133; *Ex parte* Bridges, 2 Woods, 428.

SEC. 754. Application for writ of habeas corpus shall be made to the court, or justice, or judge authorized to issue the same, by complaint in writing, signed by the person for whose relief it is intended, setting

forth the facts concerning the detention of the party restrained, in whose custody he is detained, and by virtue of what claim or authority, if known. The facts set forth in the complaint shall be verified by the oath of the person making the application.

5 Feb., 1867, c. 28, s. 1, v. 14, p. 385.
See further as to McLeod's case, *infra*, § 350.

XIX. *TERRITORIAL BOUNDARIES DETERMINED BY POLITICAL AND NOT JUDICIAL ACTION.*

§ 22.

In a controversy between the United States and a foreign nation as to boundary, the courts will follow the decision of those departments of the Government to which the assertion of its interests against foreign powers is confided, *i. e.*, the legislative and executive.

Foster *v.* Neilson, 2 Peters, 253; Garcia *v.* Lee, 12 *id.*, 511; Williams *v.* Suffolk Ins. Co., 13 *id.*, 415; U. S. *v.* Reynes, 9 Howard, 127.

CHAPTER II.

SOVEREIGNTY OVER WATER.

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I. *HIGH SEAS, SOVEREIGNTY OVER.*

§ 26.

The high seas belong in common to all nations, with the exception of that portion of water covered by a ship of a particular nation; which portion of water is considered as part of the territory of the nation to which the ship belongs.

Infra, § 33.

The law of the sea, like all the laws of nations, rests upon the common consent of civilized communities; and while no single nation can change it, it can be changed by common consent, of which the court will take judicial notice.

The Scotia, 14 Wallace, 170.

When a controversy between foreign vessels in the courts of the United States arises under the common law of nations, the court below, having admiralty functions, should take jurisdiction, unless special grounds are shown why it should not do so.

The Belgenland, 114 U. S., 355.

A collision on the high seas between vessels of different nationalities is *prima facie* a proper subject of inquiry in any court of admiralty which first obtains jurisdiction.

Ibid.

II. *TERRITORIAL WATERS, PRIVILEGES OF.*

§ 27.

As to limits of territorial waters as affected by necessity, see *infra*, § 38.
As to Russian claim of territorial waters, see *infra*, § 32.

The admission of foreign vessels of war within our territorial waters is by international law a matter of courtesy, and, when there is no treaty, may be refused by the Executive on due cause.

Infra, §§ 315*b*, *ff.* 319.

A neutral is bound not to permit his territorial waters to be the base of action by one belligerent against another; and he is responsible for his failure to perform his duty in this respect to a belligerent who may be injured thereby.

Infra, § 399.

A neutral who sustains injury from belligerent action in his territorial waters may claim from such belligerent compensation for such injury.

Infra, §§ 32, 227, 228, 398, 399.

A seizure within the waters of the United States, by a British cruiser, of a Spanish vessel alleged to be a slaver, is an invasion of the sovereignty of the United States.

Mr. Clay, Sec. of State, to Mr. Vaughan, Feb. 18, 1828; MSS. Notes For. Leg.

An attack by one belligerent cruiser in the territorial waters of a neutral on a vessel belonging to the other belligerent, is an insult for which the neutral is entitled to demand redress and reparation.

Infra, § 399.

"In the case of the Anna captured by a British cruiser in 1805, near the mouth of the Mississippi and within the jurisdiction of the United States, the British court of admiralty not only restored the captured property, but fully asserted and vindicated the sanctity of neutral territory by a decree of costs and damages against the captor. If a neutral state neglects to make such restitution, and to enforce the sanctity of its territory, but tamely submits to the outrages of one of the belligerents, it forfeits the immunities of its neutral character with respect to the other, and may be treated by it as an enemy. Phillimore on Int. Law, vol, iii, §§ 155–157; the Vrow Anna Catharina, 5 Rob., 15; the Anna, 5 Rob., 348; Heffter, Droit International, §§ 146–150; Bello, Droit Internacional, pt. ii, cap. vii, § 6; Riquelme Derecho Pub. Int., lib. i, tit. ii, cap. xvii."

2 Halleck's Int. Law (Baker's ed.), 205; as to the Anna, see more fully *infra*, § 399.

"During the war of 1812–15 between the United States and Great Britain, the United States frigate Essex was attacked and compelled to surrender, while at anchor, dismasted, in Valparaiso, by the British frigate Phœbe and sloop-of-war Cherub. The sloop-of-war Levant, a recent prize to the United States frigate Constitution, was chased into Port Praya, and captured while at anchor there by vessels from the British fleet. The United States privateer General Armstrong, lying in the harbor of Fayal, was destroyed by vessels from the British fleet. The demand upon Portugal, by the United States, for indemnification was ultimately left to the arbitration of Louis Napoleon, then President of the French Republic. He recognized the attack as a violation of neutral rights, but decided against indemnification, on the ground that the privateer did not demand protection from the Portuguese authorities at the time, but resisted by battle the unjust attack of the British vessels, instead of relying upon the neutral protection. This decision was not satisfactory to the United States, as they did not consider the fact on which it rested as established in proof. The principle of the decision must certainly be confined to cases where the vessel attacked has reason to believe that effectual protection can be seasonably afforded by the neutral, and makes a fair choice to take the chances of a combat rather than to appeal to neutral protection. Ex. Doc., 32d Cong., Senate, No. 24."

Dana's Wheaton, § 429, note 208.

For attacks in 1807 on the Chesapeake by the Leopard in United States territorial waters, see *infra*, § 315*b*.

For disquisition on territorial waters, see 11 Edinburg Rev. 16; (Oct., 1807.)

The Chesapeake was a United States merchant steamer, which sailed on December 5, 1863, from New York to Portland, carrying mainly goods. She was boarded, when starting, by six men, who asked to be received as passengers. When, however, they had left the shore, these men, under the command of one of their number named Braine, obtained control of the vessel, killed one of the officers, wounded two others, seized the captain and forced him, with a part of his crew, in a boat to reach the port of Saint John's, New Brunswick. Having become masters of the ship, those engaged in the revolt landed at several points in Nova Scotia, gave the ship the name of The Retribution, asserting that it was a Confederate war vessel, disembarked the cargo, and took in provisions and coal. This conduct exciting attention, the local authorities resisted the continuation of the performances of the Chesapeake in this line, and required her to put to sea. In the mean time the owners of the cargo complained at Washington of the spoliation of which they were the victims, and the Government of the United States called on the British minister to require the authorities of Nova Scotia to detain the Chesapeake when she should next come into port, and to imprison the parties who manned her until extradition proceedings could be had against them under the treaty of 1842. Cruisers being sent out by the Navy Department to look for the Chesapeake, she was discovered near Samboro, a Canadian port, with a signal of distress flying, deserted by the captors, and manned by two British subjects, whom the captors had employed as engineers, and by some of the original crew. Near

her was discovered a small sailing vessel, which had come to supply her with coal. On searching the latter vessel a quantity of goods from the Chesapeake, was found in the charge of one of the captors, Wade, who was seized and placed in irons. Captain Clary, of the United States cruiser Dacotah, coming into port, as senior officer, took the Chesapeake to Halifax. As the capture was made in British waters Captain Clary offered to deliver the Chesapeake and the three prisoners to the British authorities, asking that the Chesapeake be returned to her owners, and the prisoners held for extradition. Mr. Seward, at the same time, expressed to Lord Lyons the regret felt by the Department that British territorial waters should have been invaded, offering to make any amends, but repeating the request that the prisoners, when surrendered to Great Britain, should be retained to await extradition, and that the vessel should be surrendered; or, as an alternative, that both vessel and prisoners should be brought to the United States, to be delivered to the British Government if required, subject to subsequent extradition. The British Government, in reply, took the position that the seizure of the Chesapeake in British waters was an international wrong which should be repaired by the surrender of the vessel to Great Britain and by setting the prisoners free. This plan was consummated by the delivery of the Chesapeake to the British authorities at Halifax for adjudication, and the handing over the prisoners to the sheriff at that place, who set them at large. Once free they managed to escape before warrants for arrest under extradition process could be served on them. The advocate-general, as Crown officer, instituted proceedings against the Chesapeake, as having been piratically seized on the high seas, and in these proceedings the owners of vessel and cargo appeared as claimants, the United States not appearing as a party. Judge Stewart, who presided in the vice-admiralty court, held that the seizure by Braine and his confederates, as they had no belligerent commission, was piratical, and that hence restitution was to be ordered to the owners. He went on to say that even if Braine and his confederates had belligerent authority, their course after the seizure deprived them of the right such authority would give, since they brought the vessel into a neutral port, without judicial condemnation, and there sold the cargo, comprising neutral as well as enemy's property, surreptitiously using false pretenses to obtain supplies, and then, instead of contesting their rights as belligerents, fled the jurisdiction.

See summary in Calvo, 3d ed., 3 vol., 481; and see also *infra*, § 315.

On this question Mr. Dana thus speaks:

"The whole case is resolved into a few elements: Whether Braine and his party were pirates *jure gentium*, or only criminals by the municipal law of the United States, the naval officers of the United States, as belligerents, had no right to arrest them or the vessel within British territorial jurisdiction. Disclaimer and apology by the United States became necessary, and were freely tendered. The United

States regarded the case as one of pure piracy, and the act of its officers in making the arrest as the result of a zealous desire to perform a duty to mankind, and accompanied with no willful or unnecessary force or rudeness; and, as the port was a small one, with no local police force, the retaking possession of persons and property piratically seized, under such circumstances, for the sole purpose of delivering them at once into competent neutral custody, constituted rather a formal than a serious violation of the law of nations, for which restoration of the vessel and prisoners to British authority, disclaimer, apology, and a censure of the officers was an adequate satisfaction and security. Great Britain acquiesced in this view. No competent claim of belligerent authority for the seizure by Braine and his party was ever made, either in the courts or to the political authorities of Great Britain, so the legal and political character of the case was one of piracy, with a notion that a color of belligerent authority might possibly have existed, which was never produced. The restitution of vessel and cargo to the owners, by rule of the vice-admiralty court, on motion of the crown officer, ended the question as to the vessel; and the escape of the men, between their discharge and rearrest closed the question as to the extradition. U. S. Dip. Corr. 1864, Part I, pp. 46, 72, 121, 196, 431; Part II, pp. 401–407, 468, 474, 482, 483, 488, 490, 511, 538, 562, 650. Papers presented to the House of Commons in reply to the address of March 7, 1864, North America, No. 9."

Dana's Wheaton, § 428, note 207.

The seizure of the Confederate cruiser Florida, by the Federal cruiser Wachusett, in the port of Bahia, Brazil, in October, 1864, was conceded by the United States Government to be an invasion of Brazilian territorial waters. The act was disavowed by the United States, and in a note of December 26, 1864, to Mr. Barbosa da Silva, Brazilian minister at Washington, Mr. Seward announced the proposed trial by court-martial of the captain of the Wachusett, the dismissal of the United States consul at Bahia, who advised the attack, the release of the parties on the Florida, and a salute to the Brazilian flag. Mr. Seward proceeded to mention that the Florida, while at anchor in Hampton Roads, had, by an unavoidable casualty, foundered. To fulfill the engagement of saluting the Brazilian flag, the United States Government, in 1866, sent to Bahia a United States vessel of war for the announced purpose of delivering a solemn salute to the Brazilian flag on the spot where Brazilian neutrality had been invaded.

See Dana's Wheaton, note, 209; Calvo, 3d ed., 3 vol., 487, where the case is given in detail. See also *infra*, § 399.

The papers connected with the seizure of the schooner Greyhound, in Boston Harbor, in August, 1793, by orders of the French vice-consul in Boston, are given in 1 Am. State Papers; For. Rel., 178 *ff*.

The seizure by a ship-of-war of the United States of a vessel within the jurisdiction of a foreign government, for an infringement of our revenue or navigation laws, is a violation of the territorial authority of such government.

4 Op., 285, Nelson, 1843.

III. *BAYS.*

§ 28.

The whole of the waters within the capes of the Delaware Bay is neutral territory when the United States is neutral. This neutrality depends not "on any of the various distances claimed" on the sea "by different nations possessing the neighboring shore," but upon the fact that the United States are the proprietors of the lands on both sides of the Delaware, from its head to its entrance into the sea. But the law of nations and the treaty of Paris of 1783 may justify the United States in attaching to their coasts "an extent into the sea beyond the reach of cannon shot."

1 Op., 32, Randolph, 1793; 1 Am. St. Pap. (For. Rel.), 80. (See Mr. Jefferson, Sec. of State, to Mr. Morris, Aug. 16, 1793. MSS. Inst. Ministers; 1 Am. St. Papa. (For. Rel.), 167.

"Delaware Bay was declared in 1793 to belong exclusively to the United States. When, however, the headlands are very remote, there is more doubt in regard to the claim of exclusive control over them; and, for the most part, such claim has not been made. Chancellor Kent (I, 30) inclines to claim for the United States the dominion over a very wide extent of the adjacent ocean. 'Considering,' says he, 'the great extent of the line of the American coasts, we have a right to claim, for fiscal and defensive regulations, a liberal extension of maritime jurisdiction; and it would not be unreasonable, as I apprehend, to assume for domestic purposes connected with our safety and welfare the control of waters on our coasts, though included within lines stretching from quite distant headlands—as, for instance, from Cape Ann to Cape Cod, and from Nantucket to Montauk Point, and from that point to the capes of the Delaware, and from the south cape of Florida to the Mississippi. In 1793 our Government thought they were entitled, in reason, to as broad a margin of protected navigation as any nation whatever, though at that time they did not positively insist beyond the distance of a marine league from the sea-shores; and in 1806 our Government thought it would not be unreasonable, considering the extent of the United States, the shoalness of their coast, and the natural indication furnished by the well-defined path of the Gulf Stream, to expect an immunity from belligerent warfare for the space between that limit and the American shore.' But such broad claims have not, it is believed, been much urged, and they are out of character for a nation that has ever asserted the freedom of doubtful waters, as well as contrary to the spirit of the more recent times."

Woolsey's Int. Law, § 56. (See comments in Whart. Com. Am. Law, § 192 and discussions in procedure of Halifax Commission, Vol. I, 145 *ff.*)

As to marine belt see *infra*, § 32.

"In defining the distance protected against belligerent proceedings it would not, perhaps, be unreasonable, considering the extent of the United States, the shoalness of their coast, and the natural indication furnished by the well-defined path of the Gulf Stream, to expect an immunity for the space between that limit and the American shore.

But at least it may be insisted that the extent of the neutral immunity should correspond with the claims maintained by Great Britain around her own territory."

Mr. Madison, Sec. of State, to Messrs. Monroe and Pinkney, May 17, 1806. MSS. Inst. Ministers.

It cannot be asserted as a general rule that nations have an exclusive right of fishery over all adjacent waters to a distance of three marine miles beyond an imaginary line drawn from headland to headland. This doctrine of headlands is new, and has received a proper limit in the convention between France and Great Britain of the 2d of August, 1839, in which "It is equally agreed that the distance of three miles fixed as the general limit for the exclusive right of fishery upon the coasts of the two countries shall, with respect to bays, the mouths of which do not exceed ten miles in width, be measured from a straight line drawn from headland to headland."

Umpire, London C., 1853, 212; S. P., 214. Cited 1 Halifax award, 152. See *infra*, § 32.

Where two nations are possessed of territory on opposite sides of a bay or navigable river, the sovereignty of each presumptively extends to the middle of the water from any part of their respective shores.

5 Op., 412, Crittenden, 1851.

Where one nation first takes possession of the whole of the bay or navigable river, and exercises sovereignty thereon, the neighboring people shall nevertheless be "lords of their particular ports, and so much of the sea or navigable river as the convenient access to the shore requires."

Ibid.

On May 14, 1870, the "headland" doctrine having been reasserted by Mr. Peter Mitchell, provincial minister of marine and fisheries, Lord Granville, British foreign secretary, on June 6, 1870, telegraphed to the governor-general as follows: "Her Majesty's Government hopes that the United States fishermen will not be, for the present, prevented from fishing, except within three miles of land, or in bays which are less than six miles broad at the mouth."

1 Halifax Comm., 155. *Infra*, §§ 32, 303.

IV. *STRAITS.*

§ 29.

"Negotiations are pending with Denmark to discontinue the practice of levying tolls on our vessels and their cargoes passing through the sound. I do not doubt that we can claim exemption therefrom, as a matter of right. It is admitted on all hands that this exaction is sanctioned, not by the general principles of the law of nations, but only by special conventions, which most of the commercial nations have entered

into with Denmark. The fifth article of our treaty of 1826 with Denmark provides that there shall not be paid, on the vessels of the United States and their cargoes when passing through the sound, higher duties than those of the most favored nations. This may be regarded as an implied agreement to submit to the toll during the continuance of the treaty, and, consequently, may embarrass the assertion of our right to be released therefrom. There are also other provisions in the treaty which ought to be modified. It was to remain in force for ten years, and until one year after either party should give notice to the other of intention to terminate it. I deem it expedient that the contemplated notice should be given to the Government of Denmark."

President Pierce's second annual message, 1854.

"I remain of the opinion that the United States ought not to submit to the payment of the sound dues, not so much because of their amount, which is a secondary matter, but because it is in effect the recognition of the right of Denmark to treat one of the great maritime highways of nations as a close sea, and prevent the navigation of it as a privilege, for which tribute may be imposed upon those who have occasion to use it.

"This Government, on a former occasion not unlike the present, signalized its determination to maintain the freedom of the seas and of the great natural channels of navigation. The Barbary States had for a long time coerced the payment of tribute from all nations whose ships frequented the Mediterranean. To the last demand of such payment made by them the United States, although suffering less by their depredations than many other nations, returned the explicit answer that we preferred war to tribute, and thus opened the way to the relief of the commerce of the world from an ignominious tax, so long submitted to by the more powerful nations of Europe.

"If the manner of payment of the sound dues differ from that of the tribute formerly conceded to the Barbary States, still their exaction by Denmark has no better foundation in right. Each was, in its origin, nothing but a tax on a common natural right, extorted by those who were at that time able to obstruct the free and secure enjoyment of it, but who no longer possess that power.

"Denmark, while resisting our assertion of the freedom of the Baltic Sound and belts, has indicated a readiness to make some new arrangement on the subject, and has invited the Governments interested, including the United States, to be represented in a convention to assemble for the purpose of receiving and considering a proposition which she intends to submit for the capitalization of the sound dues, and the distribution of the sum to be paid as commutation among the Governments according to the respective proportion of their maritime commerce to and from the Baltic. I have declined, in the behalf of the United States, to accept this invitation, for the most cogent reasons. One is that Denmark does not offer to submit to the convention the question of

her right to levy the sound dues. The second is, that if the convention were allowed to take cognizance of that particular question, still it would not be competent to deal with the great international principle involved, which affects the right in other cases of navigation and commercial freedom as well as that of access to the Baltic. Above all, by the express terms of the proposition it is contemplated that the consideration of the sound dues shall be commingled with and made subordinate to a matter wholly extraneous—the balance of power among the Governments of Europe.

"While, however, rejecting this proposition, and insisting on the right of free transit into and from the Baltic, I have expressed to Denmark a willingness, on the part of the United States, to share liberally with other powers in compensating her for any advantages which commerce shall hereafter derive from expenditures made by her for the improvement and safety of the navigation of the sound or belts."

President Pierce's third annual message, 1855.

The imposition by Denmark of sound dues on shipping of the United States is regarded by the Government of the United States as inconsistent with just principles of international law.

Mr. Buchanan, Sec. of State, to Mr. Flenniken, Oct. 14, 1848. MSS. Instruct., Denmark. Mr. Marcy, Sec. of State, to Mr. Bedinger, July 18, 1853; March 12, 1855; Nov. 3, 1855; Feb. 19, 1856; May 5, 1856. *Ibid.*

"By a convention, of April 11, 1857, between the United States and Denmark, the navigation of the sound and belts is declared free to American vessels; and Denmark stipulates that these passages shall be lighted and buoyed as heretofore, and to make such improvements in them as circumstances may require, without any charges to American vessels and their cargoes, and to maintain the present establishment of pilots, it being optional for American masters to employ them at reasonable rates fixed by the Danish Government or to navigate their own vessels. In consideration of these stipulations the United States agreed to pay to Denmark 717,829 rix-dollars, or $393,011 in the currency of the United States. Any other privileges granted by Denmark to any other nation at the sound and belts, or on her coasts and in her harbors, with reference to the transit by land, through Danish territory, of their merchandise, shall be extended to and enjoyed by citizens of the United States, their vessels and property. The convention of April 26, 1826, to become again binding, except as regards the article referring to the sound dues. United States Statutes at Large, vol. xi, p. 719."

Lawrence's Wheaton, ed. 1863, p. 335.

See further correspondence attached to President Pierce's messages above quoted; House Ex. Doc. No. 108, 33d Cong., 1st sess.; 2 Benton's Thirty Years in Senate, 362.

The subject of sound dues is further discussed in Woolsey's Int. Law, § 57, see also North American Review for Jan. 1857; 2 Fiore Droit Int., 2d ed. (trans. by Antoine, 1885), § 724; 3 Calvo Droit Int., 3d ed., 342.

The correspondence with Denmark (1841–1854) relative to sound dues will be found in British and Foreign State Papers, 1854–'55, vol. 45, 807.

"This Government is not disposed to prematurely raise any question to disturb the existing control which Turkey claims over the straits leading into the Euxine. It has observed the acquiescence of other powers whose greater propinquity would suggest more intimate interests in the usage whereby the Porte claims the right to exclude the national vessels of other powers from the passage of those straits.

"But while this Government does not deny the existence of the usage, and has had no occasion to question the propriety of its observance, the President deems it important to avoid recognizing it as a right under the law of nations.

"The position of Turkey with reference to the Euxine may be compared to that of Denmark with reference to the Baltic, with the difference that the former is a sovereign over the soil on both sides of the straits, while Sweden owns the territory on the east of the sound leading to the Baltic.

"Commercial nations from the earliest times until recently submitted to the exactions of Denmark of what were called the sound dues, which were ultimately abolished by the payment of a gross sum by each country, proportionate to its tonnage, in the habit of passing the sound.

"The legality of the tax when it was levied was, at least, questionable, and probably was acquiesced in from its antiquity merely, though, perhaps, in part from a regard to the comparative weakness of Denmark to resist its collection by the commercial world at large, or by the more powerful nations singly.

"We are not aware that Denmark claimed the right to exclude foreign vessels of war from the Baltic merely because in proceeding thither they must necessarily pass within cannon-shot of her shores. If this right has been claimed by Turkey in respect to the Black Sea, it must have originated at a time when she was positively and comparatively in a much more advantageous position to enforce it than she now is. The Black Sea, like the Baltic, is a vast expanse of waters, which wash the shores not alone of Turkish territory, but those of another great power who may, in times of peace at least, expect visits from men-of-war of friendly states. It seems unfair that any such claim as that of Turkey should be set up as a bar to such an intercourse, or that the privilege should in any way be subject to her sufferance.

"There is no practical question making it necessary at present to discuss the subject, but should occasion arise when you are called upon to refer to it, you will bear in mind the distinction taken above, and be cautious to go no further than to recognize the exclusion of the vessels as a usage."

Mr. Fish, Sec. of State, to Mr. MacVeagh, May 5, 1871. MSS. Inst., Turkey; For Rel., 1871. See 2 Fiore Droit int. (trans. in French by Antoine, 1885), § 748.

"The abstract right of the Turkish Government to obstruct the navigation of the Dardanelles even to vessels of war in time of peace is a serious question. The right, however, has for a long time been

claimed, and has been sanctioned by treaties between Turkey and certain European states. A proper occasion may arise for us to dispute the applicability of the claim to United States men-of-war. Meanwhile it is deemed expedient to acquiesce in the exclusion."

Mr. Fish, Sec. of State, to Mr. Boker, Jan. 3, 1873. MSS. Inst., Turkey.

"The United States are not a party to the convention which professes to exclude vessels of war from the Dardanelles; and while it is disposed to respect this traditional sensibility of the Porte as to that passage, the shot which it is supposed may have been intended for a national vessel of this Government might, if it had been directed according to the supposed intention, have precipitated a discussion if not a serious complication."

Mr. Fish, Sec. of State, to Mr. Boker, Jan. 25, 1873; MSS. Inst., Turkey.

The Government of the United States will not tolerate exclusive claims by any nation whatsoever to the Straits of Magellan, and will hold responsible any Government that undertakes, no matter on what pretext, to lay any impost or check on United States commerce through those straits.

Mr. Evarts, Sec. of State, to Mr. Osborn, Jan. 18, 1879. MSS. Inst., Chili.

While a natural thoroughfare, although wholly within the dominion of a Government, may be passed by commercial ships, of right, yet the nation which constructs an artificial channel may annex such conditions to its use as it pleases.

The Avon, 18 Int. Rev. Rec., 165.
As to neutralized waters see *infra*, § 40.

V. *RIVERS.*

§ 30.

The message of President J. Q. Adams, on January 25, 1828, on the navigation of the Saint Lawrence, with the accompanying papers, is given in House Doc. No. 464, Twentieth Congress, first session; 6 Am. State Papers (For. Rel.), 757. Among these papers are the following: Mr. Rush, minister at London, to Mr. Adams, Secretary of State, August 12, 1824; Mr. Clay, Secretary of State, to Mr. Gallatin, minister at London, June 19, 1826, August 8, 1826; Mr. Gallatin to Mr. Clay, September 21, 1829, October 1, 1827.

The position taken by Mr. Clay, in his instructions to Mr. Gallatin, of June 19, 1826, was that the United States claimed the right of free navigation of the Saint Lawrence as a strait dividing two sovereignties. The British Government took the position that while not conceding the claim as a matter of right, they would be willing to negotiate in respect to it as a matter of convenience. The argument on the side of the United States is given in the American paper entitled the Eighteenth Protocol; that on the side of Great Britain in the British paper entitled the Twenty-fourth Protocol. (See also Ex. Doc. No. 43, Twentieth Congress, first session.)

By the reciprocity treaty of June 5, 1854, "the citizens and inhabitants of the United States shall have the power to navigate the river Saint Lawrence and the canals in Canada used as the means of communicating between the great lakes and the Atlantic Ocean, with their vessels, boats, and crafts as fully and freely as the subjects of Her Britannic Majesty, subject only to the same tolls and other assessments as now are or may hereafter be exacted of Her Majesty's said subjects; it being understood, however, that the British Government retains the right of suspending this privilege on giving due notice thereof to the Government of the United States. It is further agreed that if at any time the British Government should exercise the said reserved right, the Government of the United States shall have the right of suspending, if it think fit, the operations of Article III of the present treaty, in so far as the province of Canada is affected thereby, for so long as the suspension of the free navigation of the river Saint Lawrence or the canals may continue. It is further agreed that British subjects shall have the right freely to navigate Lake Michigan with their vessels, boats, and crafts, so long as the privilege of navigating the river Saint Lawrence, secured to American citizens by the above clause of the present article shall continue; and the Government of the United States further engages to urge upon the State governments to secure to the subjects of Her Britannic Majesty the use of the several State canals on terms of equality with the inhabitants of the United States. And it is further agreed that no export duty, or other duty, shall be levied on lumber or timber of any kind cut on that portion of the American territory in the State of Maine watered by the river Saint John and its tributaries and floated down that river to the sea when the same is shipped to the United States from the province of New Brunswick."

This treaty was terminated March 17, 1866, under resolution of Congress of January 18, 1865.

"A like unfriendly disposition has been manifested on the part of Canada in the maintenance of a claim of right to exclude the citizens of the United States from the navigation of the Saint Lawrence. This river constitutes a natural outlet to the ocean for eight States, with an aggregate population of about 17,600,000 inhabitants, and with an aggregate tonnage of 661,367 tons upon the waters which discharge into it. The foreign commerce of our ports on these waters is open to British competition, and the major part of it is done in British bottoms.

"If the American seamen be excluded from this natural avenue to the ocean, the monopoly of the direct commerce of the lake ports with the Atlantic would be in foreign hands; their vessels on transatlantic voyages having an access to our lake ports which would be denied to American vessels on similar voyages. To state such a proposition is to refute its justice.

"During the administration of Mr. John Quincy Adams, Mr. Clay

unanswerably demonstrated the natural right of the citizens of the United States to the navigation of this river, claiming that the act of the congress of Vienna, in opening the Rhine and other rivers to all nations, showed the judgment of European jurists and statesmen that the inhabitants of a country through which a navigable river passes have a natural right to enjoy the navigation of that river to and into the sea, even though passing through the territories of another power. This right does not exclude the coequal right of the sovereign possessing the territory through which the river debouches into the sea to make such regulations relative to the police of the navigation as may be reasonably necessary; but those regulations should be framed in a liberal spirit of comity, and should not impose needless burdens upon the commerce which has the right of transit. It has been found in practice more advantageous to arrange these regulations by mutual agreement. The United States are ready to make any reasonable arrangement, as to the police of the Saint Lawrence, which may be suggested by Great Britain.

"If the claim made by Mr. Clay was just when the population of States bordering on the shores of the lakes was only 3,400,000, it now derives greater force and equity from the increased population, wealth, production, and tonnage of the States on the Canadian frontier. Since Mr. Clay advanced his argument in behalf of our right the principle for which he contended has been frequently, and by various nations, recognized by law or by treaty, and has been extended to several other great rivers. By the treaty concluded at Mayence, in 1831, the Rhine was declared free from the point where it is first navigable into the sea. By the convention between Spain and Portugal, concluded in 1835, the navigation of the Douro, throughout its whole extent, was made free for the subjects of both crowns. In 1853 the Argentine Confederation by treaty threw open the free navigation of the Parana and the Uruguay to the merchant vessels of all nations. In 1856 the Crimean war was closed by a treaty which provided for the free navigation of the Danube. In 1858 Bolivia, by treaty, declared that it regarded the rivers Amazon and La Plata, in accordance with fixed principles of national law, as highways or channels, opened by nature for the commerce of all nations. In 1859 the Paraguay was made free by treaty, and in December, 1866, the Emperor of Brazil, by imperial decree, declared the Amazon to be open, to the frontier of Brazil, to the merchant ships of all nations. The greatest living British authority on this subject, while asserting the abstract right of the British claim, says: 'It seems difficult to deny that Great Britain may ground her refusal upon strict *law*, but it is equally difficult to deny, first, that in so doing she exercises harshly an extreme and hard law; secondly, that her conduct with respect to the navigation of the Saint Lawrence is in glaring and discreditable inconsistency with her conduct with respect to the navigation of the Mississippi. On the ground that she possessed a small domain, in which the

Mississippi took its rise, she insisted on the right to navigate the entire volume of its waters. On the ground that she possesses both banks of the Saint Lawrence, where it disembogues itself into the sea, she denies to the United States the right of navigation, though about one-half of the waters of Lakes Ontario, Erie, Huron, and Superior, and the whole of Lake Michigan, through which the river flows, are the property of the United States.'

"The whole nation is interested in securing cheap transportation from the agricultural States of the West to the Atlantic sea-board. To the citizens of those States it secures a greater return for their labor; to the inhabitants of the sea-board it affords cheaper food; to the nation, an increase in the annual surplus of wealth. It is hoped that the Government of Great Britain will see the justice of abandoning the narrow and inconsistent claim to which her Canadian provinces have urged her adherence."

President Grant's second annual message, 1870.

The treaty of Washington of May 8, 1871, provides as follows:

"ARTICLE XXVI.

"The navigation of the river St. Lawrence, ascending and descending, from the forty-fifth parallel of north latitude, where it ceases to form the boundary between the two countries, from, to, and into the sea, shall forever remain free and open for the purposes of commerce to the citizens of the United States, subject to any laws and regulations of Great Britain, or of the Dominion of Canada, not inconsistent with such privilege of free navigation.

"The navigation of the rivers Yukon, Porcupine, and Stikine, ascending and descending, from, to, and into the sea, shall forever remain free and open for the purposes of commerce to the subjects of Her Britannic Majesty and to the citizens of the United States, subject to any laws and regulations of either country within its own territory, not inconsistent with such privilege of free navigation.

"ARTICLE XXVII.

"The Government of Her Britannic Majesty engages to urge upon the Government of the Dominion of Canada to secure to the citizens of the United States the use of the Welland, St. Lawrence, and other canals in the Dominion on terms of equality with the inhabitants of the Dominion; and the Government of the United States engages that the subjects of her Britannic Majesty shall enjoy the use of the St. Clair Flats Canal on terms of equality with the inhabitants of the United States, and further engages to urge upon the State governments to secure to the subjects of Her Britannic Majesty the use of the several State canals connected with the navigation of the lakes or rivers trav-

ersed by, or contiguous to the boundary line between the possessions of the high contracting parties, on terms of equality with the inhabitants of the United States.

"ARTICLE XXVIII.

"The navigation of Lake Michigan shall also, for the term of years mentioned in Article XXXIII of this treaty, be free and open for the purposes of commerce to the subjects of Her Britannic Majesty, subject to any laws and regulations of the United States or of the States bordering thereon not inconsistent with such privilege of free navigation.

"ARTICLE XXIX.

"It is agreed that, for the term of years mentioned in Article XXXIII of this treaty, goods, wares, or merchandise arriving at the ports of New York, Boston, and Portland, and any other ports in the United States which have been or may, from time to time, be specially designated by the President of the United States, and destined for Her Britannic Majesty's possessions in North America, may be entered at the proper custom-house and conveyed in transit, without the payment of duties, through the territory of the United States, under such rules, regulations, and conditions for the protection of the revenue as the Government of the United States may from time to time prescribe; and under like rules, regulations, and conditions, goods, wares or merchandise may be conveyed in transit, without the payment of duties, from such possessions through the territory of the United States for export from the said ports of the United States."

"The ocean is free to all men, and their rivers to all their inhabitants. * * * Accordingly, in all tracts of country united under the same political society, we find this natural right universally acknowledged and protected by laying the navigable rivers open to all their inhabitants. When their rivers enter the limits of another society, if the right of the upper inhabitants to descend the stream is in any case obstructed, it is an act of force by a stronger society against a weaker, condemned by the judgment of mankind."

Report of Mr. Jefferson, March 18, 1792. 7 Jeff. Works, 577.

"The Roman law, which, like other municipal laws, placed the navigation of their rivers on the footing of nature, as to their own citizens, by declaring them public (flumina publica sunt, hoc est populi Romani, Inst. 2, t. 1, § 2), declare also that the right to the use of the shores was incident to that of the water. *Ibid.*, §§ 1, 3, 4, 5."

Ib. 7 Jeff. Works, 580. See App., Vol. III, § 30.

Mr. Jefferson's instructions of March 18, 1792, to Messrs. Carmichael and Short, as to the navigation of the Mississippi River, and as to riparian rights, are given in 1 Am. State Papers (For. Rel.), 252.

As to title to the Mississippi, see Mr. J. Q. Adams to Mr. De Onis, Oct. 31, 1818. *Supra*, § 5.

The question of the conflicting rights of Spain and of the United States, in 1804, to the Mississippi River, is discussed at great length in a correspondence between Messrs. Monroe and Armstrong, ministers of the United States to Spain and France, and the Spanish and French Governments.

2 Am. State Papers (For. Rel.), 596, *ff.*

The right to peacefully navigate the Amazon River belongs, in international law, to all maritime states.

Mr. Marcy, Sec. of State, to Mr. Trousdale, Aug. 8, 1853. MSS. Inst., Brazil.

"I have the honor to inform you that I have received a telegram from the ministry of foreign relations of the United States of Mexico, dated yesterday at the city of Mexico, in which I am informed that the commander of the United States troops in Roma, Texas, says that he has instructions from the War Department to occupy the islands of Morteritos and Sabinos.

"As Mexico has always had possession of that island, my Government instructs me to request that of the United States of America that matters may remain in *statu quo* until both Governments come to an agreement upon this subject.

"A note from this legation, having reference to a circumstance relative to that island, was sent to your Department the 13th of March last, which was answered by you on the 8th of April following."

Mr. Romero, Mexican Minister, to Mr. Frelinghuysen, Sec. of State, May 24, 1884. MSS. Notes, Mex. Leg., For. Rel., 1884.

"I have the honor to inform you that I have to-day received a note from the foreign office of the United Mexican States, dated Mexico, May 23 ultimo, in which I am informed that according to information possessed by that office the islands of Morteritos and Sabinos, referred to in my note to your Department of 24th May, belong to Mexico by reason of having remained when the dividing line between the two countries was laid down in conformity with article 5 of the boundary treaty of the 2d of February, 1848, on the right side of the deepest channel of the river, for which reason they have since then remained in the possession of Mexico, forming a part of the municipality of Mier, in the State of Tamaulipas.

"It is true that by reason of a recent change in the currents of the Rio Bravo both of those islands are now on the left bank of the greater arm and deeper channel of the river; but as, in the opinion of the Mexican Government, the dividing line between the two countries is that which was laid down by the mixed commission, which met in conformity with the treaty of February 2, 1848, there can be no doubt with respect to the legitimate ownership of those islands.

"I think it unnecessary to say to you that these islands are those numbered 12 and 13, of which Maj. William H. Emory, chief of the boundary commission of the United States, speaks in his report to the Secretary of the Interior, dated in this city July 29, 1856, page 65, volume 1.

"In view of these facts, the Government of Mexico hopes that the Government of the United States will recognize the right of Mexico to those islands which is derived from an existing treaty between the two countries, and from the demarkation of the line made in conformity with the aforesaid treaty and supported by an uninterrupted possession of nearly forty years."

Mr. Romero, Mexican Minister, to Mr. Frelinghuysen, Sec. of State, June 2, 1884. *Ibid.*

"Referring to the notes which I addressed to your Department on the 13th of March and the 24th of May last, and on the 2d instant, in reference to the islands of Morteritos and Sabinitos, in the Rio Grande, of which Mexico has been in possession for the reason that she considered them as an integral part of her territory, I have the honor to inform you that I have this day received from the department of foreign relations of Mexico various documents showing the rights of Mexico to the said islands. I inclose a copy of the principal ones of these documents and of a drawing which was sent as an inclosure to the report of Engineer Garfias, of April 19, 1880, together with an index showing their dates and giving a brief outline of their contents.

"It appears from the said documents that the aforesaid islands were to remain on the right of the deepest channel of the Rio Grande, when the demarkation of limits was made according to the treaties of February 2, 1848, and December 30, 1853, belonging consequently to Mexico, according to the report of Engineer Ignacio Garfias (inclosure No. 4); that, among various changes that took place in the bed of the river, owing to freshets in the year 1865, the island of Morteritos became united to another which was quite near it, but the new island remained on the right of the deepest channel of the river; that Mexicans were the owners of the island contiguous to the right bank, and citizens of the United States the owners of the other, but that when both were united all the parties interested made an agreement on the 9th of March, 1874, before the court at Mier, whereby Mexicans remained in possession of the whole island; that the island has been in the possession of Mexico since that time; judicial acts being exercised there, such as the establishment of a section of vigilance, and grain being sown by Mexican citizens; that another change which took place in the deepest channel of the Rio Grande left the island of Morteritos on the left side of the channel, and for this reason, on the 20th of January last, several armed persons from Roma, Tex., headed by W. W. Bohorman, the judge at Roma, in Starr County, Texas, invaded the island of Morteritos, destroyed several inclosures, drove out the Mexican owners, and divided their property among themselves; and that a short time before several residents of Roma had appealed to the judicial authorities of Texas, requesting them to declare that the island belonged to them by accession.

"I shall not now stop to speak of the incident relative to private property on the island of Morteritos, which, as appears from the inclosed document, was declared to belong to Doña Guadalupe Garcia, according to the decision of the supreme court of justice of Mexico, dated October 24, 1836, because in this note I am simply endeavoring to demonstrate its nationality; that is to say, that it forms a part of the territory of Mexico.

"Without prejudice to the subsequent transmission to you of the report of the engineer who has been sent by the Government of Mexico to the Rio Grande to make a study of this subject on the spot, together with such other data as I may hereafter receive from my Government, I have the honor to inform you that the department of foreign relations of the United States of Mexico has informed me, by a note bearing date of the 28th of May last, that—

"'In the inclosed documents there are irrefutable and full data, showing unmistakably the right of eminent domain of Mexico to the island of Morteritos, among them the survey and the sounding made by our consul at Rio Grande City, the agreement made by the inhabitants of the two countries before the court at Mier with regard to the posses-

sion of the land on the island, the report of Engineer Garfias, and the fact that a section of vigilance was established on the island without any attempt having hitherto been made by the Government of the United States to exercise jurisdiction on that island, or to interfere with that of the Mexican authorities.'

"In view of these considerations, the Government of Mexico instructs me 'to request that of the United States to issue the necessary orders to the end that the free action of the Mexican authorities on that island may not be obstructed.'"

Mr. Romero, Mexican Minister, to Mr. Frelinghuysen, Sec. of State, June 12, 1884; *Ibid.*

For the papers submitted with this note by the Mexican Minister in support of the claim of his Government, see For. Rel., 1884, pp. 382–393.

"Your notes of the 13th of March, 24th of May, and 2d and 12th of June, of the present year, have presented the question of the disputed ownership of two islands in the Rio Bravo, near Roma, Tex. This question has received the careful consideration due to its importance, and I have now the honor to acquaint you with the reply of this Government to the representations made on behalf of that of Mexico, and especially to the detailed case presented with your note of 12th June.

"The two islands, as you state, are known in Spanish as Morteritos and Sabinitos, and in your note of the 2d of June it is assumed that they are the islands designated as Nos. 12 and 13 at the time of the original survey.

"This is, however, incorrect of Sabinitos Island, which appears in the maps of the original survey made by the boundary commission in 1853 as No. 14, and is therein credited to Mexico. As the papers submitted by you show no question of importance affecting the island of Sabinitos (No. 14) it may be laid aside for the present.

"The question seems to be confined to the island known as Morteritos, which appears in the charts of the boundary commission as Beaver Island, No. 13.

"This island was formerly the most southerly and the larger of two pod-shaped islands lying in a bend of the river near the Texan town of Roma. The channel, never at any time navigable, which formerly separated the two islands is now dry, and the channel to the northward of the twin island so formed is the widest, and at the present time the deepest of the two arms of the river.

"The Mexican claim to jurisdiction rests briefly on the following bases:

"1. A scientific report of the engineer, Garfias, dated 16th April, 1880, which argues that the present deepest channel to the northward must always have been the deepest (and therefore under the treaty of Guadalupe-Hidalgo the boundary line between the two countries) in pursuance of an observed peculiarity of rivers by which the deepest flow of water follows the hollow of a curve in the river bed.

"2. Ownership by Mexican citizens, and an agreement among said owners, in March, 1874, whereby the island of Morteritos and its accretions were confirmed to them under the authority of Mexico.

"The second of these points is to be dismissed forthwith from consideration, for this Government does not admit, nor if the case were reversed is it to be supposed that the Mexican Government would admit, the right of alien owners of land to transfer, under color of any judicial agreement whatsoever, the territorial domain over their estates to the jurisdiction and sovereignty of the nation to whom such individuals

owe allegiance. This position is, moreover, wholly opposed to the contention of the Mexican Government itself, that the territorial jurisdictions established on behalf of the respective parties to the treaty of Guadalupe-Hidalgo remain forever as originally fixed under that compact, and are not to be affected by any abrupt changes in the course of the river Bravo.

"This reduces the question to one of simple fact, namely, the ascertainment of the boundary channel fixed by the commissioners under the treaty of Guadalupe-Hidalgo.

"To the end of ascertaining that fact, an examination of the original records and charts of the commissioner of survey has been made by Brig. Gen. W. H. Emory, of the United States Army, under whose supervision, as commissioner on the part of the United States, the original survey and determination of the boundary was effected.

"That officer, under date of the 19th ultimo, reports as follows:

"* * * By reference to original notes and maps in State Department, I find Islands Nos. 12 and 14 were assigned to Mexico, and 14, I believe to be Island Sabinos [Sabinitos] referred to by Señor Romero.

"Island No. 13 was assigned to the United States. It is no doubt the island called by Señor Romero Morteritos, and by me Beaver Island. I say of that island, in my report, that 'the waters of the Rio Grande are divided at that point into three parts, and the channel that lies nearest to the Mexican shore is so narrow that steamers can with difficulty pass through it, yet the branches, by reason of their shallowness, are wholly impassable for them. An attempt was made by the Mexican local authorities to arrest a steamboat in its passage through the narrow channel, but the actual experience of the navigator proved it to be the true channel and consequently the boundary between the two countries.

"It was further agreed between the commissioners that in case the channel changed, the right of navigation should remain unimpaired to both countries, but the jurisdiction of the land should remain as we had arranged.

"So far as the question of territorial jurisdiction in the event of a change in the channel is concerned, the agreement of the commissioner remains merely an expression of opinion, which, however valuable as an enunciation of a theoretical principle, has not been confirmed as between the two Govornments. That of Mexico has, however, on various occasions, put forth this principle as its own, and a proposal has been made through your predecessor, Señor Mariscal, and through you, to negotiate a formal conventional agreement on that basis in settlement of disputes touching the true river boundary under the treaty of Guadalupe-Hidalgo. That proposal is now under attentive consideration.

"As to the original ownership of the two islands known by the United States commission as Beaver Islands, being the island known to your Government as Morteritos, and the smaller island lying parallel with Morteritos, and to the north of it, there can be no doubt that they were by the survey assigned to the United States.

"Against the actual record of the commission (the original charts of which you have been afforded an opportunity of inspecting in person in company with General Emory) the speculative and scientific report of Engineer Garfias and his survey and soundings, made seventeen years after the original official determination of the boundary channel, can have no weight whatever, being based on an evidently changed condition of things, whereby the old middle water-course between the

two islands has disappeared, and the most northerly of the three channels has been deflected and deepened in the process of time.

"This Government must deny the implication conveyed in your note of June 12, and its accompaniments, that the United States have tacitly acquiesced in the jurisdictional rights from time to time assumed by the Mexican local authorities over the territory covered by the islands in question. No case in point has arisen to call the attention of this Government to the question. The owners of the land were Mexican citizens, as it appears, and their acquiescence in the Mexican claims of jurisdiction over their land, although natural under the circumstances, was wholly devoid of any confirmatory power as against the rights of the United States under the treaty. It was not until very recently, when the action of the Mexican authorities of Mier developed a wholly untenable claim to jurisdiction ever a broad tract of low-lying land on the United States bank of the river, which land it was pretended had at some time become united with one of the islands through the filling up of the water-way between them, that a case calling for investigation and action was presented, involving also, as it does, the question of the true ownership of the island claimed to have been enlarged by the accretion of United States territory. The rights of the United States in the premises remained, perhaps, dormant, but without laches on their part, and, on the issue being revived, those rights revive, too, in all their force.

"Touching the reference in your note to the statement found on page 65 of the Report of the Boundary Survey, that 'Islands Nos. 12 and 13, between Ringgold Barracks and Roma, both fall to the United States,' it should be here stated that the report is erroneous, through a typographical mistake. The original charts and notes show that Island No. 12 is a small island named 'Green Key Island' on the charts, situated in an abrupt bend of the river, about half way between Fort Ringgold and Morteritos Island. Island No. 13, as already shown, comprises the twin Beaver Islands, whereof the larger and more southerly was called by the Mexicans Morteritos. The island known to both parties as Sabinitos (or Sabinos) is marked No. 14 on the chart, and lies a short distance above Roma.

"In conclusion I have the honor to inform you, in answer to your several notes, that the facts and record of the case warrant and demand that the Government of the United States shall regard its territorial jurisdiction over the island of Morteritos, otherwise Beaver Island (No. 13), as established by the boundary commission under the treaty of Guadalupe-Hidalgo, and, consequently, that the Mexican pretension to that island and to accretions thereto from the left or United States bank of the Rio Grande shall be denied."

Mr. Frelinghuysen, Sec. of State, to Mr. Romero, July 10, 1884. MSS. Notes, Mexico; *ibid.*

"By instruction No. 550, of the 23d of April last, you were acquainted with a dispute then lately arisen concerning the legitimate jurisdiction over certain islands in the Rio Grande (Rio Bravo) near Roma, Tex., and you were directed to present the matter to the Mexican Government and ask consideration of our just claim to jurisdiction in the premises.

"Since then the Mexican Government has made, through Señor Romero, under date of June 12 last, a counter complaint, claiming

Morteritos Island as Mexican territory, with its accretions, and protesting against any attempt on the part of the United States to exercise authority over that island.

"The note of Mr. Romero and its inclosures, being very voluminous and not yet wholly translated, could not be sent to you herewith without involving inconvenient delay. Copies will, however, go to you as soon as possible, to complete your record.

"The question appearing to be one of simple fact, to be settled by the records of the boundary commission, under the signatures of both commissioners, now on file in this Department, I requested the Secretary of War to direct Brig. Gen. W. H. Emory, U. S. Army, the United States commissioner on the original survey, to examine the records and charts thereof. General Emory has done so, Señor Romero having had at the same time opportunity to personally inspect the records and charts. The general's report removes all ground for doubt that Morteritos belongs to the United States, under the prescriptions of the treaty of Guadalupe-Hidalgo.

"I have accordingly replied to the Mexican contention by a note to Señor Romero, of which I inclose a copy for your information.

"The question would appear to have been in part founded on a case of mistaken identity, in assuming that two small twin islands below and near to Roma, and separated at the time of the survey by a shallow water-course now believed to be filled up, were the Morteritos and Sabinos Islands of the Mexican contention and identical with islands Nos. 12 and 13. It seems clear that Sabinitos (or Sabinos) is a large single island, lying some distance above Roma, and is acknowledged Mexican territory both by the records of the survey and in the absence, so far as known here, of any occasion for dispute in respect thereof. Island No. 12, to which Señor Romero refers in one of his notes on the subject, lies lower down the river, near Ringgold Barracks, is styled on the survey charts Green Key Island, and likewise appears to belong to Mexico without dispute.

"It is apparently in respect only of the small twin islands, known on charts both as 'Beaver Islands' and as 'Island No. 13,' that any dispute exists. The larger of these, lying nearest to the Mexican shore, appears to be known to the Mexicans as 'Morteritos.' The other smaller island of the pair may or may not be locally known as 'Sabinos.' It bears no separate name on the charts. The fact is, however, wholly immaterial, for both the islands are by the two commissioners assigned to the United States.

"After reading my note to Señor Romero and familiarizing yourself with the ground therein taken, you will seek a conference with the Mexican secretary for foreign affairs on the subject. You will point out to him that under whichever aspect it be viewed, whether as resting on a change in the deepest channel subsequent to the assignment

of the survey, or on the allegiance of the reputed Mexican owners of the land and on any agreement among them of which the Mexican courts may have taken cognizance, the Mexican claim is completely at variance with the ground taken by the Mexican Government itself, that the boundary fixed by the survey is definitive, and not to be changed. You may advert to the proposal made to this Government by Mr. Romero (in a note dated 31st May), to review the negotiation proposed in 1875 by Señor Mariscal to Mr. Fish for a convention to settle boundary disputes growing out of changes in the channel of the Bravo by declaring that no such change shall affect the actual boundary fixed by the survey, and you may observe that this Government can hardly be expected to attach much weight to that proposition if, in the first case of dispute arising, the Mexican Government is found to adopt a diametrically opposed theory. You may also find it convenient to advert to the circumstance, shown by the inclosures to my No. 520, that the Mexican owners claim the subsequent accretions to Morteritos as belonging to them, and, consequently, to the territorial jurisdiction of Mexico also, and comment on its untenable character; for even if Morteritos Island were Mexican territory, which the record of the survey shows it is not, the annexation of United States territory by accretion or by change of channel could not be recognized.

"You will further point out that in this contention we have the right to deem ourselves the aggrieved party. The Mexican authorities at Mier have assumed to exercise territorial jurisdiction, not merely over the island of Morteritos, but over part of the territory of the United States which has since accidentally been joined to that island by the closing of a water-way. Our effort to assert the jurisdictional power belonging to us of right, has been resented as an unwarrantable interference and made the occasion of a complaint which proves to be baseless. Notwithstanding this, the Government of the United States promptly acceded to a request of the Mexican minister, and directed its authorities on the frontier to avoid all pretext of conflict with the Mexican authorities until the question of ownership should be amicably settled. In communicating to the Secretaries of the Treasury and of War the conclusion of this Government that Morteritos is wholly of the domain of the United States, the request that the officers of this Government in that quarter should continue to avoid forcible assumption of jurisdiction has been renewed.

"Under all these circumstances, you will formally ask that the Mexican Government forthwith cease any claim to territorial jurisdiction over the island of Morteritos, and cause to be duly respected the boundary line to the south of that island, and between it and the Mexican bank, as determined by the United States and Mexican commissioners in the survey.

"Upon the removal of this question from the field of debate, this Gov-

ernment will have pleasure in taking up and considering Señor Mariscal's original proposal, now revived by Señor Romero, for negotiating a formal convention in settlement of like disputes in future."

Mr. Frelinghuysen, Sec. of State, to Mr. Morgan, July 11, 1884. MSS. Instr., Mexico; *ibid.*

"I have to acknowledge the receipt of your dispatch, No. 609, July 11, 1884, in regard to a dispute concerning the legitimate jurisdiction over certain islands in the Rio Grande near Roma, Tex., and in which I was instructed, to 'formally ask that the Mexican Government forthwith cease any claim to territorial jurisdiction over the islands of Morteritos, and cause to be duly respected the boundary line to the south of that island and between it and the Mexican bank, as determined by the United States and Mexican commissioners in the survey.'

"I was unable to obtain an interview with Señor Fernandez until the 31st ultimo.

"I then informed him that, as he was aware, a question had lately arisen between our respective Governments concerning the legitimate jurisdiction over certain islands in the Rio Grande (Rio Bravo) near Roma, Tex., and the principal contention, and the one to which I would at present confine myself, was the island of 'Morteritos,' the Mexican Government claiming that the island with its accretions belongs to Mexico, while the United States contends that the island, or what was the island, forms part of the territory of the United States.

"I said that the boundary commissioners appointed under the treaty of Guadalupe-Hidalgo placed this island within the jurisdiction of the United States, and that it having been joined by accretion to the north bank of the river, Mexico claimed not only the island but the accretion referred to, and that the Mexican authorities at Mier had assumed to exercise a jurisdiction not merely over the island but over that part of the territory of the United States which has since been accidentally joined to that island (Morteritos) by the closing of a waterway.

"I further said that the efforts of the United States to assert jurisdictional power belonging to them of right has been resented as an unwarrantable interference and made the occasion of a complaint by Mexico which proves to be baseless. Notwithstanding this, however, the Government of the United States promptly acceded to a request of the Mexican minister at Washington, and directed its authorities on the frontier to avoid all pretext of conflict with the Mexican authorities until the question of ownership should be amicably settled, and that even now in communicating to the Secretaries of the Treasury and of War the conclusion arrived at by the United States Government that the island was wholly the domain of the United States, the request had been again renewed that the officers of the Government in that quarter should continue to avoid forcible assumption of jurisdiction.

"I further said that the Mexican claim to jurisdiction appeared to rest upon two grounds:

"1. A scientific report of the engineer, Garfias, dated 16th April, 1880, which argues that the present deepest channel to the northward must always have been the deepest (and therefore under the treaty of Guadalupe-Hidalgo the boundary line between the two countries) in pursuance of an observed peculiarity of rivers by which the deepest flow of water follows the hollow of a curve in the river bed.

"2. Ownership by Mexican citizens, and an agreement among said

owners in March, 1874, whereby the island of Morteritos and its accretions were confirmed to them under the authority of Mexico.

"I informed Señor Fernandez that the second of these points must be dismissed from consideration, as the Government of the United States did not admit the right of owners of land to transfer under color of any judicial agreement whatever the territorial domain over their estates to the jurisdiction and sovereignty of the nation to whom such individuals owe allegiance.

"I then said that this reduced the question to one of simple fact, namely, the ascertainment of the boundary channel fixed by the commissioners under the treaty of Guadalupe-Hidalgo. This, I said, as I had remarked before, was done by the said commissioners, they having placed the island, at the time of the survey, within the jurisdiction of the United States.

"I informed Señor Fernandez that I had been instructed to formally ask that his Government forthwith cease any claim to territorial jurisdiction over the island of Morteritos, and cause to be duly respected the boundary line to the south of that island and between it and the Mexican bank, as determined by the United States and Mexican commissioners in the survey.

"I said to Señor Fernandez that on the 31st May last Señor Romero, the Mexican minister at Washington, had proposed to you to revive the proposed negotiations made by Señor Mariscal to Mr. Fish in the year 1875 for a convention to settle boundary disputes growing out of changes in the channel of the Bravo, and declaring that no such change shall affect the actual boundary fixed by the survey.

"I said that upon the removal of the question of the island of Morteritos from the field of debate I was authorized to say that the Government of the United States would have pleasure in considering Señor Mariscal's original proposition, which has lately been renewed by Señor Romero, as above stated, for negotiating a formal convention for the settlement of like disputes in future, but at the present moment, however, the Government of the United States could hardly be expected to attach much weight to that proposition if in the first case of dispute arising the Mexican Government was found to a adopt a diametrically opposite course.

"Señor Fernandez informed me that the question of the proprietorship of the island of Morteritos had been submitted to the proper Department, and that as soon as he should receive a report therefrom he would inform me of the decision thereof.

"I suggested to him that as the question was one of importance I would be glad to receive his reply at as early a date as possible.

"Señor Fernandez requested me to transmit to him a memorandum of the interview which we had had upon the subject, which I did on the day following (August 1, 1884), which is substantially as reported in the foregoing.

"I have seen Señor Fernandez upon several occasions since the 31st ultimo, but he has said nothing to me upon the subject further than that he had received no report from the Mexican authorities with reference to the island, and I therefore deem it proper to let you see that I have complied with your instructions."

Mr. Morgan to Mr. Frelinghuysen, Sec. of State, Aug. 11, 1884. MSS. Dispatches, Mexico; *ibid.*

"I have the honor to inform you that I received in due time and transmitted to my Government your note of the 10th July last, in

reply to those which I addressed to the Department on the 13th of March and the 24th of the preceding May, and the 2d and 12th of June, with respect to the question raised touching the ownership of the islands of Morteritos and Sabinitos, situated in the Rio Bravo.

"You were pleased to state in the aforesaid note that the island of Sabinitos appeared marked as No. 14 in the maps of the original survey made by the boundary commission in 1853, and that it remained on the Mexican side, for which reason there can be no doubt thereto, and with respect to the island of Morteritos or Beaver Island or Island No. 13, you state:

"That the facts and record of the case warrant and demand that the Government of the United States shall regard its territorial jurisdiction over the island of Morteritos, otherwise Beaver Island (No. 13), as established by the boundary commission under the treaty of Guadalupe-Hidalgo.

"To the end that the Mexican Government might better examine the bases presented by you in order to reach the conclusions which you expressed, I solicited, together with General Emory, permission to examine the original maps of the mixed boundary commission which exist in the Department of State, since I could not here consult the copies existing in Mexico.

"There appeared to be an evident confusion in the name of Island No. 13, and it did not clearly appear whether it was or was not the island of Morteritos.

"A careful examination on this subject having been made by my Government, the President has decided not to insist upon the rights of Mexico over the island of Morteritos in the supposition that it is Island No. 13, or Beaver Island.

"The bases of this decision rest upon the stipulations of the fifth article of the treaty of Guadalupe-Hidalgo of February 2, 1848, that the dividing line between our two countries from the Gulf of Mexico to Paso del Norte should be the center of the Rio Grande, and that where this river had more than one channel the line should follow the deepest. This circumstance being borne in mind by the boundary commission in laying down the line, the channel which lay to the south of Island No. 13, or Morteritos, or Beaver Island, left this island upon the side of the United States.

"As this is the basis presented by the Government of the United States to defend its rights to that island, it thus recognizes that the limit between the two Republics are those fixed by the treaty of Guadalupe-Hidalgo, such as were laid down by the mixed commission, without having been altered by the changes occasioned by the current of the river, whether in its margins or the deepest of its channels.

"It is very satisfactory to me to see that in this important point there is an uniformity of views and principles between our two Governments.

"I cannot end this note without calling your attention to the good faith and justice of the Government of Mexico in the present case, since instead of leaving this matter pending, or proposing that it should be decided by the treaty which it has submitted for the consideration of the United States, it has acted with loyalty in recognizing their rights without reserve."

Mr. Romero, Mexican Minister, to Mr. Frelinghuysen, Sec. of State, Oct. 9, 1884. MSS. Notes, Mex. Leg.; *ibid.*

"The State of Texas has municipal jurisdiction under the law of nations over the Rio Grande to the middle of the stream, so far as it

divides Texas from Mexico. This is subject to such international jurisdiction as the United States may have over such waters under the Constitution of the United States, and to the right of the free use by Mexico of the channel."

After quoting Article V of the treaty of Guadalupe Hidalgo, the instruction proceeds to say:

"It may be proper to add that it has been held in this Department that when, through the changing of the channel of the Rio Grande, the distance of an island in the river from the respective shores has been changed, the line adjusted by the commissioners under the treaty is nevertheless to remain as originally drawn."

Mr. Bayard, Sec. of State, to Mr. Bowen, June 12, 1886. MSS. Dom. Let.

When a great river is the boundary between two nations or states, if the original property is in neither and there be no convention respecting it, each holds to the middle of the stream. But where a state which is the original proprietor grants the territory on one side only, it retains the river within its own domains, and the newly-erected state extends to the river only. In such case the lower-water mark is its boundary, whether the fluctuations in the stream result from tides or from an annual rise and fall.

Handly v. Anthony, 5 Wheaton, 374.

Where a river forms the boundary between two countries, and the only access to the adjacent territories is through such river, the waters of the whole river must be considered as common to both nations, for all purposes of navigation, as a common highway. Hence, the mere transit of a French vessel through the waters of a river which forms the boundary between the United States and the territory of a foreign state, for the purpose of proceeding to such territory, cannot be taken to subject the vessel to penalties imposed by the United States upon French vessels for entering their territory.

The Apollon, 9 Wheaton, 362.

In a disputed boundary case, in which a State was held to have ownership of soil and jurisdiction in the bed of a river, the bed of the river was defined to include "that portion of its soil *which is alternately covered and left bare as there may be an increase or diminution in the supply of water, and which is adequate to contain it at its average and mean stage during the entire year, without reference to the extraordinary freshets of the winter or spring, or the extreme droughts of the summer or autumn.*"

It was also held that in places where the bank was not defined, the line must be continued up the river on the line of its bed, as defined above.

State of Alabama v. State of Georgia, 23 Howard, 505.

Where a river is the boundary between two nations, it continues so notwithstanding accretion and decretion of its banks; but if it violently leave its bed, the latter remains the boundary.

8 Op., 175, Cushing, 1856.

When a river is in the territory of a particular state, then the public control of the entire river and jurisdiction of offenses committed on it, belong properly to such state. On this topic Holtzendorff, Enc. 1223, cites Wurm, Briefe über die Freiheit der Flussschiffahrt, 1858; Caratheodory, Du droit int. concernant les grands cours d'eau, 1861; Engelhard, Du regime conventional des fleuves, 1870. By the treaty of Versailles, of 1783, by which the independence of the United States was recognized, it was provided in article 8, that 'the navigation of the river Mississippi shall forever remain free and open to the subjects of Great Britain, and the citizens of the United States.' But the United States having purchased Louisiana, on April 30, 1803, from France, and Florida from Spain, on February 22, 1819, acquired possession of the banks on both sides of the Mississippi, and the treaty of Ghent, of December 24, 1814, no doubt for this reason, omitted all reference to the rights of British subjects to the navigation of the river. Since then the exclusive control of the river by the United States, so far as concerns foreign states, has been conceded internationally; though, subject to police supervision and to the right to impose pilotage and quarantine regulations, the free navigation of this and of other navigable rivers within the United States is, by the law of nations, accepted by the United States, open to all ships of foreign sovereigns. The right freely to navigate the Saint Lawrence, was for many years the subject of controversy between Great Britain and the United States; the United States insisting on the right of free passage over this river, the lakes by which it is fed being in large part bounded by the United States. This right, however, was resisted by Great Britain. 'It is difficult to deny,' says Sir R. Phillimore (Phil. Int. Law, 3d ed., 245), 'that Great Britain may have grounded her refusal upon strict law; but it is at least equally difficult to deny, first, that in so doing she put in force an extreme and hard law; secondly, that her conduct with respect to the navigation of the Saint Lawrence was inconsistent with her conduct with respect to the navigation of the Mississippi. On the ground that she possessed a small tract of domain in which the Mississippi took its rise, she insisted on her right to navigate the entire volume of its waters; on the ground that she possessed both banks of the Saint Lawrence where it disembogued itself into the sea, she denied to the United States the right to navigation, though about one-half of the waters of Lakes Ontario, Erie, Huron, and Superior, and the whole of Lake Michigan, through which the river flows were the property of the United States.' The question, however, was settled with the withdrawal, in the reciprocity treaty of June 5, 1854, of the exclusive claims of Great Britain. This treaty, it is true, ceased to exist on January 18, 1865, by action of the Government of the United States, in pursuance of a right reserved in this treaty; but the exclusive navigation of the river has not since then been insisted on by Great Britain." Whart. Com. Am. Law, and see, also, Lawrence's Wheaton, n. 114, p. 361.

As regulating rights to navigable rivers, see treaties of the United States with Argentine Confederation, 10 U. S. Stat. at L., 1005; with Mexico, *ib.*, 1031; with Bolivia, 12 *ib.*, 1003; with Paraguay, *ib.*, 1091.

Mr. Field (International Code, § 55) states the rule as follows:

"A nation, and its members, through the territories of which runs a navigable river, have the right to navigate the river to and from the high seas, even though passing through the territory of another nation, subject, however, to the right of the latter nation to make necessary or reasonable police regulations for its own peace and safety. Message of President Grant to the Congress of the United States, December, 1870, and treaties there cited."

"By the Roman law a free passage is given to all parties over all navigable rivers with the use of the shore (jus littoris) for unloading cargo and anchoring vessels. (i,

1–7, Inst., ii, 1.) A distinction, however, was taken between the sea, which was "res communes" and navigable rivers, which were "res publicae." The same view was taken by Grotius (Lib. II, c. ii, § 12), but the great weight of authority since Vattel is that the state through which a river flows is to be the sole judge of the right of foreigners to the use of such river. Wheat. Int. Law, i, 229; Vattel, I, i, § 292.

"On the other hand, when the free navigation of a river is conceded, this carries with it the right to use the shores so far as this is necessary to the use of the river. Phil., *ut sup.*, i, 225; Wheat. Hist. of Law of Nat., 510." Whart. Com. Am. Law, § 191.

"When a navigable river forms the boundary between between two states, both are presumed to have free use of it, and the dividing line will run in the middle of the channel, unless the contrary is shown by long occupancy or agreement of the parties. If a river changes its bed, the line through the old channel continues, but the equitable right to the free use of the stream seems to belong, as before, to the state whose territory the river has forsaken.

"When a river rises within the bounds of one state and empties into the sea in another, international law allows to the inhabitants of the upper waters only a moral claim or imperfect right to its navigation. We see in this a decision based on strict views of territorial right, which does not take into account the necessities of mankind and their destination to hold intercourse with one another. When a river affords to an in land state *the only*, or *the only convenient* means of access to the ocean and to the rest of mankind, its right becomes so strong, that according to natural justice possession of territory ought to be regarded as a far inferior ground of right."

Woolsey, § 58.

"Where the entire upper portion of a navigable river is included within a single state, the part so inclosed is undoubtedly the property of such state. Where a navigable river forms the boundary of conterminous states, the middle of the channel—the *filum aquae* or thalweg—is generally taken as the line of their separation, the presumption of law being that the right of navigation is common to them both. But this presumption may be rebutted or destroyed by actual proof of the exclusive title of one of the riparian proprietors to the entire river. Such title may have been acquired by prior occupancy, purchase, cession, treaty, or any one of the modes by which other public territory may be acquired. But where the river not only separates the conterminous states, but also their territorial jurisdictions, the thalweg, or middle current, forms the line of separation through the bays and estuaries through which the waters of the river flow into the sea. As a general rule, this line runs through the middle of the deepest channel, although it may divide the river and its estuaries into two very unequal parts. But the deeper channel may be less suited, or totally unfit, for the purposes of navigation, in which case the dividing line would be in the middle of the one best suited and ordinarily used for that object. The division of the islands in the river and its bays would follow the same rule."

1 Halleck Int. Law (by Baker), 146.

Portions of the correspondence with Great Britain in 1824–'27, as to the river St. Lawrence, will be found in the British and Foreign State Papers for 1831–'32, vol. 19, 309.

For notices of the free navigation of the Mississippi, the St. Lawrence, the Plata, the Amazon, the Scheldt, the Congo, and the Niger, see Schuyler's Am. Diplomacy, chapter vi; and see also report on free navigation, House Rep. No. 295, 31st Cong., 1st sess.

For American and British papers prepared in negotiations of 1822–'23 see Senate Ex. Doc. No. 396, 18th Cong., 2d sess.; 5 Am. State Pap. (For. Rel.), 571, 574.
As to Amazon River, see memorial of Lieut. Maury on free navigation of, House (Misc.) Doc. No. 22, 33d Cong., 1st sess.
As to Amoor River, and papers as to explorations of, see House Ex. Doc. No. 98, 35th Cong. 1st sess.
An article by M. E. Engelhardt, on neutrality in relation to "fleuves internation aux et aux canaux maritimes," is given in Revue de Droit Int., 1886, No. 2, 159.
As to admiralty jurisdiction over rivers, see *infra*, § 35*a*.
As to Congo River, see *infra*, § 51.
See, further, App., Vol. III, § 30.

By the treaty of April 9, 1855, the Argentine Republic conceded the free navigation of the rivers Parana and Uruguay, such "free navigation" * * belonging "to the merchant vessels of all nations."

By a treaty of February 4, 1859 (proclaimed March 12, 1860), the free navigation of the Paraguay, so far as belonging to the Republic of Paraguay, is granted by Paraguay to the United States.

Bolivia, by the treaty of May 13, 1858 (proclaimed January 8, 1883), grants to the United States similar privileges as to the La Plata and the Amazon.

As to the Amazon, whose waters flow through Peru, Ecuador, and Bolivia, the following is to be observed: Peru, by its treaty of July 26, 1851, gives to the United States, as to the Amazon, the privileges of the most favored nation, which carries the privileges of free navigation granted by Peru to Brazil. Ecuador, in 1853, decrees free navigation of its rivers, which include the affluents of the Amazon. The same rights are granted by Bolivia to the United States by the treaty of May 13, 1858, above noticed. See *infra*, §§ 40, 157, 321.

"As to the Peruvian tributaries of the Amazon, a controversy arose between the United States and Peru. By the treaty between those powers, of 26th July, 1851, it is agreed that there shall be 'reciprocal liberty of commerce and navigation between their respective territories,' and that 'the citizens of either may frequent with their vessels all the coasts, ports, and places of the other where foreign commerce is permitted,' and shall have 'full liberty to trade in all parts of the territories of either'; and each agrees 'not to grant any favor, privilege, or immunity whatever, in matters of commerce and navigation, to other nations which shall not be immediately extended to the citizens of the other contracting party.' On the 23d October following, Peru made a treaty with Brazil to regulate the navigation of the Amazon and its tributaries, in which it is agreed that vessels of either country, passing to or from portions of the other on that river or its tributaries, shall be subject only to reciprocal duties, such as either nation lays on its own products. The United States contended that this treaty came within the operation of the reciprocal clause of the treaty of the 26th July, 1851, and gave to our commerce the same right in the Peruvian tributaries of the Amazon with Brazilian commerce."

Dana's Wheaton, § 205, note 118.

By a decree taking effect September 7, 1867, Brazil opened the Amazon to foreign commerce, and the same course was taken by Peru, on December 17, 1868. *Infra*, § 157.

"By the treaty of December 30, 1853, between the United States and Mexico, navigation is made free to vessels of the United States to and from their own territory, through the Colorado and the Gulf of California, and through the Mexican part of the Rio Grande below latitude 31° 47′ 30″."

Dana's Wheaton, § 205, note 118.

The Congress of Vienna of 1815, in a large measure under the influence of Baron Humboldt, laid down the following rules:

(1) Navigation for the purpose of trade is not to be interdicted to any person on such navigable waters as traverse the territory of several states, this being conditioned on their conformity to local police regulations.

(2) Tariffs for this purpose are to be established on a uniform and permanent basis (façon uniforme et invariable) and in such a way as not to prevent trade.

(3) The rights of "ancrage," of "nolis," and of "relâche forcée," etc., to be abolished.

(4) Each state will undertake such works as are useful in improving navigation.

(5) "Bureaux de perception" to be confined to such action as is strictly necessary.

(6) Frontier customs offices are to be so conducted as not unnecessarily to impede navigation.

The vagueness of these rules has led to many questions, which have been more or less solved by conventions between the parties in interest.

2 Fiore, Droit Int. (2d ed., 1885, translated by Antoine), § 761. Fiore proceeds to discuss in much detail the general rules of international law in respect to navigable rivers.

VI.—*LAKES AND INLAND SEAS.*

§ 31.

The right and title to the shores of the Great Lakes is in the several States, and not in the United States.

6 Op., 172, Cushing, 1853.

As to conventions with Great Britain in respect to the great North American lakes, see *infra*, § 150.

An inland sea or lake belongs to the state in which it is territorially situated. As illustrations may be mentioned the inland lakes, whose entire body is within the United States, and the Sea of Azov. Those portions of the sea which are bounded by several European states were at one time claimed to belong in common to the states by which they are bounded; but this claim is not now allowed. The fact that both shores of an arm of the sea, as in the case with Magellan's Straits, have, subsequent to its adoption as a public highway, been under the possession of a single power, does not change its public character. Nor, it is now finally settled, can a strait which separates two or more countries (*e. g.*, the British Channel or the Sound) be placed under their joint control, so as to put other countries at a disadvantage. A distinctive rule has been adopted in reference to the Dardanelles and the Bosphorus, which, even in times of peace, are closed to the ships of war of all European nations, a rule only deviated from in cases of peculiar courtesy. Since 1871, the merchant ships of all nations have equal rights on the Black Sea.

Whart. Com. Am. Law, § 192; Woolsey, § 57; and see, also, Holtzendorff, Enc. 1222, referring to Twiss's "Territorial Waters" in the Nautical Magazine, 1878; Stork, Jurisdiktion in Küstengewässern.

Under the treaty of Paris of 1856, the Black Sea is neutralized, and by a subsequent convention Russia and Turkey limited their naval force on the Black Sea. By a treaty of March 13, 1871, it is provided that "the Black Sea remains open, as heretofore, to the mercantile marine of all nations." For a specification of treaties referring to Turkey and the Black Sea, see Phill., *op. cit.*, 295 *ff*. As to neutralization see *infra*, § 40.

As to the North American lakes in respect to treaty limitations, see *infra*, § 40.

VII. *MARGINAL BELT OF SEA.*

§ 32.

"The greatest distance to which any respectable assent among nations has been at any time given, has been the extent of the human sight, estimated at upwards of twenty miles, and the smallest distance, I believe, claimed by any nation whatever, *is the utmost range of a cannon ball*, usually stated at one sea league. * * * The character of our coast, remarkable in considerable parts of it for admitting no vessels of size to pass near the shores, would entitle us, in reason, to as broad a margin of protected navigation as any nation whatever."

Mr. Jefferson, Sec. of State, to Mr. Genet, Nov. 8, 1793. MSS. Notes, For. Leg; 1 Am. State Pap. (For. Rel.), 183; 1 Wait's Am. St. Pap., 195.

The limit of one sea league from shore is provisionally adopted as that of the territorial sea of the United States.

Mr. Jefferson, Sec. of State, to the Minister of Great Britain, Nov. 8, 1793. MSS. Notes, For. Leg. (See, also, letter to District Attorneys, Nov. 10, 1793. MSS. Dom. Let.)

As to lines between head lands, see *supra*, §§ 27, 28; as to bays, *supra*, § 28.

"Our jurisdiction has been fixed (at least for the purpose of regulating the conduct of the Government in regard to any events arising out of the repsent European war) to extend three geographical miles (or nearly three and a half English miles) from our shores, with the exception of any waters or bays which are so land-locked as to be unquestionably within the jurisdiction of the United States, be their extent what they may."

Mr. Pickering, Sec. of State, to Gov. of Va., Sept. 2, 1796. MSS. Dom. Let.

"The President (Mr. Jefferson, in an informal conversation) mentioned a late act of hostility committed by a French privateer near Charleston, S. C., and said we ought to assume, as a principle, that the neutrality of our territory should extend tc the Gulf Stream, which was a natural boundary, and within which we ought not to suffer any hostility to be committed. Mr. Gaillard observed that on a former occasion in Mr. Jefferson's correspondence with Genet, and by an act of Congress at that period, we had seemed only to claim the usual distance of three miles from the coast; but the President replied that he had then assumed that principle because Genet, by his intemperance, forced us to fix on some point, and we were not then prepared to assert the claim of jurisdiction to the extent we are in reason entitled to; but he had taken care to reserve this subject for future consideration with a view to this same doctrine for which he now contends."

1 J. Q. Adams's Mem., 376-7.

"There could surely be no pretext for allowing less than a marine league from the shore, that being the narrowest allowance found in any authorities on the law of nations. If any nation can fairly claim a greater extent the United States have pleas which cannot be rejected;

and if any nation is more particularly bound by its own example not to control our claim, Great Britain must be so by the extent of her own claims to jurisdiction on the seas which surround her. It is hoped, at least, that within the extent of one league you will be able to obtain an effectual prohibition of British ships of war from repeating the irregularities which have so much vexed our commerce and provoked the public resentment, and against which an article in your instructions emphatically provides. It cannot be too earnestly pressed on the British Government that in applying the remedy copied from regulations heretofore enforced against a violation of the neutral rights of British harbors and coasts, nothing more will be done than what is essential to the preservation of harmony between the two nations. In no case is the temptation or the facility greater to ships of war for annoying our commerce than in their hovering on our coasts and about our harbors; nor is the national sensibility in any case more justly or more highly excited than by such insults. The communications lately made to Mr. Monroe, with respect to the conduct of British commanders even within our own waters, will strengthen the claim for such an arrangement on this subject, and for such new orders from the British Government as will be a satisfactory security against future causes of complaint."

Mr. Madison, Sec. of State, to Messrs. Monroe and Pinkney, Feb. 3, 1807. MSS. Instruc. to Ministers.

"The right of a government to seize a vessel within its own jurisdiction for an actual or presumed violation of the laws and to bring her to a trial before the competent tribunal cannot be denied."

Mr. Gallatin, minister at Paris, to Baron Pasquier, minister of foreign affairs, June 28, 1821; 2 Gallatin's Writings, 186.

"A vessel on the high seas, beyond the distance of a marine league from the shore, is regarded as part of the territory of the nation to which she belongs, and subjected exclusively to the jurisdiction of that nation."

Mr. Webster, Sec. of State, to Lord Ashburton, Aug. 1, 1842; MSS. Notes Gr. Brit.; 6 Webster's Works, 306; Whart. Conf. of Laws, § 356.

"The exclusive jurisdiction of a nation extends to the ports, harbors, bays, mouths of rivers, and adjacent parts of sea inclosed by headlands, and, also, to the distance of a marine league, or as far as a cannon-shot will reach from the shore along all its coasts." Within these limits the sovereign of the mainland may arrest, by due process of law, alleged offenders on board of foreign merchant ships.

Mr. Buchanan, Sec. of State, to Mr. Jordan, Jan. 23, 1849. MSS. Dom. Let.

"This Government adheres to, recognizes, and insists upon the principle that the maritime jurisdiction of any nation covers a full marine league from its coast, and that acts of hostility or of authority within a marine league of any foreign country by naval officers of the United

States are strictly prohibited, and will bring upon such officer the displeasure of this Government."

Mr. Seward, Sec. of State, to Mr. Welles, Sec. of the Navy, Aug. 4, 1862. MSS. Dom. Let.

See, further, Mr. Seward to Mr. Welles, Oct. 10, 1862. *Ibid.*

"The undersigned would observe, in the first place, that there are two principles bearing on the subject which are universally admitted, namely, first, that the sea is open to all nations, and secondly, that there is a portion of the sea adjacent to every nation over which the sovereignty of that nation extends to the exclusion of every other political authority.

"A third principle bearing on the subject is also well established, namely, that this exclusive sovereignty of a nation, thus abridging the universal liberty of the seas, extends no farther than the power of the nation to maintain it by force, stationed on the coast, extends. This principle is tersely expressed in the maxim *Terræ dominium finitur ubi finitur armarum vis.*

"But it must always be a matter of uncertainty and dispute at what point the force of arms exerted on the coast can actually reach. The publicists rather advanced towards than reached a solution when they laid down the rule that the limit of the force is the range of a cannon-ball. The range of a cannon-ball is shorter or longer according to the circumstances of projection, and it must be always liable to change with the improvement of the science of ordnance. Such uncertainty upon a point of jurisdiction or sovereignty would be productive of many and endless controversies and conflicts. A more practical limit of national jurisdiction upon the high seas was indispensably necessary, and this was found, as the undersigned thinks, in fixing the limit at three miles from the coast. This limit was early proposed by the publicists of all maritime nations. While it is not insisted that all nations have accepted or acquiesced and bound themselves to abide by this rule when applied to themselves, yet three points involved in the subject are insisted upon by the United States: First, that this limit has been generally recognized by nations; second, that no other general rule has been accepted; and third, that if any state has succeeded in fixing for itself a larger limit, this has been done by the exercise of maritime power, and constitutes an exception to the general understanding which fixes the range of a cannon-shot (when it is made the test of jurisdiction) at three miles. So generally is this rule accepted that writers commonly use the expressions of a range of cannon-shot and three miles as equivalents of each other. In other cases they use the latter expression as a substitute for the former. Thus Wildman, in his 'Plain directions to naval officers as to the law of search, capture, and prize' (page 12, ed. London, 1854), says: 'The capture of vessels within the territory of a neutral state, or within three miles of the coast, * * * is illegal with respect to the neutral sovereign.'

"Impressed by these general views, the United States are not prepared to admit that Spain, without a formal concurrence of other nations, can exercise exclusive sovereignty upon the open sea beyond a line of three miles from the coast, so as to deprive them of the rights common to all nations upon the open sea.

"The United States admit that they have a temporary interest (during the present insurrection) to maintain a broad freedom of the seas, so as to render their naval operations as effective as may be consistent with the law of nations.

Mr. Seward, Sec. of State, to Mr. Tassara, Dec. 16, 1862. MSS. Notes, Spain.

"Nevertheless it cannot be admitted, nor indeed is Mr. Tassara understood to claim, that the mere assertion of a sovereign, by an act of legislation, however solemn, can have the effect to establish and fix its external maritime jurisdiction. His right to a jurisdiction of three miles is derived not from his own decree but from the law of nations, and exists even though he may never have proclaimed or asserted it by any decree or declaration whatsoever. He cannot, by a mere decree, extend the limit and fix it at six miles, because, if he could, he could in the same manner, and upon motives of interest, ambition, or even upon caprice, fix it at ten, or twenty, or fifty miles, without the consent or acquiescence of other powers which have a common right with himself in the freedom of all the oceans. Such a pretension could never be successfully or rightfully maintained. * * *

"It results from these remarks, that while it is admitted that on the part of Spain the claim is not one of new creation, it is practically one that has only recently been presented to the United States, and for aught that appears is entirely new to other maritime powers.

"The undersigned is far from intimating that these facts furnish conclusive reasons for denying the claim a respectful consideration. On the contrary, he very cheerfully proceeds to consider a farther argument, derived, as Mr. Tassara supposes, from reason and justice, which he has urged in respect to the claim. This ground is, that the shore of Cuba is, by reason of its islets and smaller rocks, such as to require that the maritime jurisdiction of Cuba, in order to purposes of effective defense and police, should be extended to the breadth of six miles. The undersigned has examined what are supposed to be accurate charts of the coast of Cuba, and if he is not misled by some error of the chart, or of the process of examination, he has ascertained that nearly half of the coast of Cuba is practically free from reefs, rocks, and keys, and that the seas adjacent to that part of the island which includes the great harbors of Cabanos, Havana, Matanzas, and Santiago are very deep, while in fact the greatest depth of the passage between Cuba and Florida is found within five miles of the coast of Cuba, off the harbor of Havana."

Mr. Seward, Sec. of State, to Mr. Tassara, Aug. 10, 1863. MSS. Notes, Spain.

"Spain claims a maritime jurisdiction of six miles around the island of Cuba. In pressing this claim on the consideration of the United States, Spain has used the argument that the modern improvements in gunnery render the ancient limit of a marine league inadequate to the security of neutral states.

"When it was understood at Paris that an engagement was likely to come off before Cherbourg between the United States ship of war Kearsarge and the pirate Alabama, the French Government remonstrated with both parties against firing within the actual reach of the shore by cannon-balls fired from their vessels, on the ground that the effect of a collision near the coast would be painful to France.

"For these reasons I think that the subject may now be profitably discussed, but there are some preliminary considerations which it is deemed important to submit to Her Majesty's Government:

"First. That the United States, being a belligerent now, when the other maritime states are at peace, are entitled to all the advantages of the existing construction of maritime law, and cannot, without serious inconvenience, forego them.

"Secondly. That the United States, adhering in war, no less than when they were in the enjoyment of peace, to their traditional liberality towards neutral rights, are not unwilling to come to an understanding upon the novel question which has thus been raised in consequence of the improvements in gunnery.

"But, thirdly, it is manifestly proper and important that any such new construction of the maritime law as Great Britain suggests should be reduced to the form of a precise proposition, and then that it should receive, in some manner, by treaty or otherwise, reciprocal and obligatory acknowledgments from the principal maritime powers.

"Upon a careful examination of the note you have addressed to me, the suggestions of Her Majesty's Government seem to be expressed in too general terms to be made the basis of discussion. Suppose, by way of illustration, that the utmost range of cannon now is five miles, are Her Majesty's Government understood to propose that the marine boundary of neutral jurisdiction, which is now three miles from the coast, shall be extended ten miles beyond the present limit? Again, if cannon-shot are to be fired so as to fall not only not upon neutral land, but also not upon neutral waters, then, supposing the range of cannon-shot to be five miles, are Her Majesty's Government to be understood as proposing that cannon-shot shall not be fired within a distance of eight miles from the neutral territory?

"Finally, shall measured distances be excluded altogether from the statement, and the proposition to be agreed upon be left to extend with the increased range of gunnery, or shall there be a pronounced limit of jurisdiction, whether five miles, eight miles, or any other measured limit?"

Mr. Seward, Sec. of State, to Mr. Burnley, Sept. 16, 1864. MSS. Notes, Great Britain.

"The instruction from the foreign office to Mr. Watson, of the 25th of September last, a copy of which was communicated by that gentleman to this Department, in his note of the 17th of October, directs him to ascertain the views of this Government in regard to the extent of maritime jurisdiction which can properly be claimed by any power, and whether we have ever recognized the claim of Spain to a six-mile limit or have ever protested against such claim.

"In reply I have the honor to inform you that this Government has uniformly, under every administration which has had occasion to consider the subject, objected to the pretension of Spain adverted to, upon the same ground and in similar terms to those contained in the instruction of the Earl of Derby.

"We have always understood and asserted that, pursuant to public law, no nation can rightfully claim jurisdiction at sea beyond a marine league from its coast.

"This opinion on our part has sometimes been said to be inconsistent with the facts that, by the laws of the United States, revenue-cutters are authorized to board vessels anywhere within four leagues of their coasts, and that by the treaty of Guadalupe-Hidalgo, so called, between the United States and Mexico, of the 2d of February, 1848, the boundary line between the dominions of the parties begins in the Gulf of Mexico, three leagues from land.

"It is believed, however, that in carrying into effect the authority conferred by the act of Congress referred to, no vessel is boarded, if boarded at all, except such a one as, upon being hailed, may have answered that she was bound to a port of the United States. At all events, although the act of Congress was passed in the infancy of this Government, there is no known instance of any complaint on the part of a foreign Government of the trespass by a commander of a revenue-cutter upon the rights of its flag under the law of nations.

"In respect to the provision in the treaty with Mexico, it may be remarked that it was probably suggested by the passage in the act of Congress referred to, and designed for the same purpose, that of preventing smuggling. By turning to the files of your legation, you will find that Mr. Bankhead, in a note to Mr. Buchanan of the 30th of April, 1848, objected on behalf of Her Majesty's Government, to the provision in question. Mr. Buchanan, however, replied in a note of the 19th of August, in that year, that the stipulation could only affect the rights of Mexico and the United States, and was never intended to trench upon the rights of Great Britain, or of any other power under the law of nations."

Mr. Fish, Sec. of State, to Sir Edward Thornton, Jan. 22, 1875. MSS. Notes, Great Britain; For. Rel., 1875.

The following is the section of the Revised Statutes referred to in the above note:

SEC. 2760. The officers of the revenue-cutters shall respectively be deemed officers of the customs, and shall be subject to the direction of such collectors of the revenue, or other officers thereof, as from time to time shall be designated for that purpose. They shall go on board all vessels which arrive within the United States or within four leagues of the coast thereof, if bound for the United States, and search and examine the same, and every part thereof, and shall demand, receive, and certify the manifests required to be on board certain vessels, shall affix and put proper fastenings on the hatches and other communications with the hold of any vessel, and shall remain on board such vessels until they arrive at the port or place of their destination.

As to pursuit by neutral of belligerent who has, in derogation of neutrality, fitted out a cruiser in such neutral port, see *infra*, § 396.

"There was reason to hope that the practice which formerly prevailed with powerful nations of regarding seas and bays usually of large extent near their coast as closed to any foreign commerce or fishery not specially licensed by them, was, without exception, a pretension of the past, and that no nation would claim exemption from the general rule of public law which limits its maritime jurisdiction to a marine league from its coast. We should particularly regret if Russia should insist on any such pretension."

Mr. Fish, Sec. of State, to Mr. Boker, Dec. 1, 1875. MSS. Inst., Russia.

An attack by Mexican officials on merchant vessels of the United States, when distant more than three miles from the Mexican coast, on the ground of breach of revenue laws, is an international offense, which is not cured by a decree in favor of the assailants, collusively or corruptly maintained in a Mexican court.

Mr. Evarts, Sec. of State, to Mr. Foster, Apr. 19, 1879. MSS. Inst., Mex. *Infra*, §§ 238, 239, ff.

"I have received your No. 108 of the 29th of January ultimo, with its accompanying copy and translation of the note addressed to you on the 24th of that month by the minister of state, giving the results of the investigation ordered by the Spanish Government of the circumstances under which the American vessels Ethel A. Merritt, Eunice P. Newcomb, George Washington, and Hattie Haskell were fired upon and visited by Spanish gunboats, near the island of Cuba, in May, June, and July of last year.

"The tenor of that reply is to contradict all the material allegations of the masters and officers of the several vessels named, asserting that they were in each case nearer to the Cuban coast than appeared from the statements made to this Government; that the gunboats which effected their detention and visitation acted in no warlike capacity, but as simple guardians of the revenue interests of Spain, and that neither in form nor in spirit was there any intended discourtesy to the flag of the United States.

"Immediately on the receipt of your dispatch I addressed the repre-

sentatives of each of the vessels in question, contrasting the complainants' statements (which I may observe were only accepted by the Department after the most searching methods had been adopted to arrive at the truth of the facts according to the admitted rules of evidence in such cases) with the statements now presented in behalf of the Spanish Government, and asking what corroborative evidence of the exactness of their former affirmations they can now furnish, and what reply they desire to make to the allegation that their vessels were out of their course, and so liable to suspicion. Their awaited replies will enable the Department to better judge what direction shall be given to its further action, and instructions to you on the specific points of fact involved are necessarily deferred.

"Meanwhile, it seems proper that I should briefly touch on certain points of principle suggested by Señor Elduayèn's note. The minister does not appear to meet the question of the jurisdictional limits within which the visitations were effected.

"The wide contradiction between the several statements does not suffice to bring the position of three of the vessels at the time within the customary nautical league. This Government must adhere to the three-mile rule as the jurisdictional limit, and the cases of visitation *without that line* seem not to be excused or excusable under that rule.

"This Government frankly and fully accepts the disclaimer of the Government of His Majesty that any intention of discourtesy existed in these proceedings. It insists, however, on the importance of a clear understanding of the jurisdictional limit. It insists, likewise, on the distinction between the verification (according to the usual procedure of revenue cruisers), within a reasonable range of approach, of vessels seeking Spanish ports in the due pursuit of trade therewith, and the arrest by armed force, without the jurisdictional three-mile limit, of vessels not bound to Spanish ports. The considerations on these heads, advanced in my instruction to you of August 11, seem not to have attracted from His Majesty's Government the attention due to their precise bearing on at least three of the cases in hand under the express admissions of Mr. Elduayèn's note."

Mr. Evarts, Sec. of State, to Mr. Fairchild, March 3, 1881. MSS. Inst., Spain; For. Rel., 1881.

As to how far the marine belt may be extended by making its limits extend from headland to headland, see *supra*, § 28.

"We may, therefore, regard it as settled [citing extracts from President Woolsey, the umpire of the London commission of 1853, and Lord Granville, as quoted *supra*, § 28], that so far as concerns the eastern coast of North America, the position of this Department has uniformly been that the sovereignty of the shore does not, so far as territorial authority is concerned, extend beyond three miles from low-water mark, and that the seaward boundary of this zone of territorial waters follows the coast of the mainland, extending where there are islands so as to

place round such islands the same belt. This necessarily excludes the position that the seaward boundary is to be drawn from headland to headland, and makes it follow closely, at a distance of three miles, the boundary of the shore of the continent or of adjacent islands belonging to the continental sovereign.

"The position I here state, you must remember, was not taken by this Department speculatively. It was advanced in periods when the question of peace or war hung on the decision. When, during the three earlier administrations, we were threatened on our coast by Great Britain and France, war being imminent with Great Britain, and for a time actually though not formally engaged in with France, we asserted this line as determining the extent of our territorial waters. When we were involved, in the earlier part of Mr. Jefferson's administration, in difficulties with Spain, we then told Spain that we conceded to her, so far as concerned Cuba, the same limit of territorial waters as we claimed for ourselves, granting nothing more; and this limit was afterwards reasserted by Mr. Seward during the late civil war, when there was every inducement on our part not only to oblige Spain but to extend, for our own use as a belligerent, territorial privileges. When, in 1807, after the outrage on the Chesapeake by the Leopard, Mr. Jefferson issued a proclamation excluding British men-of-war from our territorial waters, there was the same rigor in limiting these waters to three miles from shore. And during our various fishery negotiations with Great Britain we have insisted that beyond the three-mile line Britisth territorial waters on the northeastern coast do not extend. Such was our position in 1783, in 1794, in 1815, in 1818. Such is our position now in our pending controversy with Great Britain on this important issue. It is true that there are qualifications to this rule, but these qualifications do not affect its application to the fisheries. We do not, in asserting this claim, deny the free right of vessels of other nations to pass on peaceful errands through this zone, provided they do not, by loitering, produce uneasiness on the shore or raise a suspicion of smuggling. Nor do we hereby waive the right of the sovereign of the shore to require that armed vessels, whose projectiles, if used for practice or warfare, might strike the shore, should move beyond cannon range of the shore when engaged in artillery practice or in battle, as was insisted on by the French Government at the time of the fight between the Kearsarge and the Alabama, in 1864, off the harbor of Cherbourg. We claim, also, that the sovereign of the shore has the right, on the principle of self-defense, to pursue and punish marauders on the sea to the very extent to which their guns would carry their shot, and that such sovereign has jurisdiction over crimes committed by them through such shot, although at the time of the shooting they were beyond three miles from shore. But these qualifications do not in any way affect the principle I now assert, and which I am asserting and pressing in our present contention with

Great Britain as to the northeastern fisheries. From the time when European fishermen first visited the great fisheries of the northeastern Atlantic these fisheries, subject to the territorial jurisdiction above stated, have been held open to all nations, and even over the marine belt of three miles the jurisdiction of the sovereign of the shore is qualified by those modifications which the law of necessity has wrought into international law. Fishing boats or other vessels traversing those rough waters, have the right, not merely of free transit of which I have spoken, but of relief, when suffering from want of necessaries, from the shore. There they may go by the law of nations, irrespective of treaty, when suffering from want of water or of food or even of bait, when essential to the pursuit of a trade which is as precarious and as beset with disasters as it is beneficent to the population to whom it supplies a cheap and nutritious food."

Mr. Bayard, Sec. of State, to Mr. Manning, Sec. of Treasury, May 28, 1886. MSS. Dom. Let.

The limitation to three miles of the marine belt on the northeast Atlantic is based in part on treaty and in part on customary law there established as to the fisheries. It does not of itself preclude, as has been already seen, the sovereign of the shore from exercising police jurisdiction over any destructive agencies which, no matter at what distance from the shore, may inflict direct injury on the shore, or its territorial waters. *Supra*, §§ 18, *ff*, 27; see *infra*, § 303.

As to bays see *supra* § 28.

"The British 'hovering act,' passed in 1736 (9 Geo. II, cap. 35), assumes, for certain revenue purposes, a jurisdiction of four leagues from the coasts, by prohibiting foreign goods to be transshipped within that distance without payment of duties. A similar provision is contained in the revenue laws of the United States, and both these provisions have been declared by judicial authority in each country to be consistent with the law and usage of nations."

Mr. Wheaton in Dana's Wheaton, § 179.

In a note to the above, entitled "Municipal seizures beyond the marine league or cannon-shot," Mr. Dana says:

"The statement in the text requires further consideration. It has been seen that the consent of nations extends the territory of a state to a marine league or cannon-shot from the coast. Acts done within this distance are within the sovereign authority. The war right of visit and search extends over the whole sea, but it will not be found that any consent of nations can be shown in favor of extending what may be strictly called territoriality, for any purpose whatever, beyond the marine league or cannon-shot. Doubtless states have made laws for revenue purposes touching acts done beyond territorial waters, but it will not be found that, in later times, the right to make seizures beyond such waters has been insisted upon against the remonstrance of foreign states, or that a clear and unequivocal judicial precedent now stands sustaining such seizures when the question of jurisdiction has been presented. The revenue laws of the United States, for instance, provide that if a vessel bound to a port in the United States, shall, except from necessity, unload cargo within 4 leagues from the coast,

and before coming to the proper port for entry and unloading, and receiving permission to do so, the cargo is forfeit, and the master incurs a penalty (Act 2d March, 1797, § 27); but the statute does not authorize a seizure of a foreign vessel when beyond the territorial jurisdiction. The statute may well be construed to mean only that a foreign vessel, coming to an American port, and there seized for a violation of revenue regulations committed out of the jurisdiction of the United States may be confiscated, but that, to complete the forfeiture, it is essential that the vessel shall be bound to and shall come within the territory of the United States after the prohibited act. The act done beyond the jurisdiction is assumed to be part of an attempt to violate the revenue laws within the jurisdiction. Under the previous sections of that act it is made the duty of revenue officers to board all vessels for the purpose of examining their papers within four leagues of the coast. If foreign vessels have been boarded and seized on the high sea, and have been adjudged guilty, and their Governments have not objected, it is probably either because they were not appealed to or have acquiesced in the particular instance from motives of comity.

"The cases cited in the author's note do not necessarily and strictly sustain the position taken in the text. In the Louis (Dodson, ii, 245), the arrest was held unjustified, because made in time of peace for a violation of municipal law beyond territorial waters. The words of Sir William Scott, on pages 245 and 246, with reference to the hovering acts, are only illustrative of the admitted rule that neighboring waters are territorial; and he does not say, even as an *obiter dictum*, that the territory for revenue purposes extends beyond that claimed for other purposes. On the contrary, he says that an inquiry for fiscal or defensive purposes, near the coast, but beyond the marine league, as under the hovering laws of Great Britain and the United States, 'has nothing in common with the right of visitation and search upon the unappropriated parts of the ocean;' and adds, 'a recent Swedish claim of examination on the high seas, though confined to foreign ships bound to Swedish ports, and accompanied, in a manner not very consistent or intelligible, with a disclaimer of all right of visitation, was resisted by the British Government, and was finally withdrawn.' Church *v.* Hubbard (Cranch, ii, 187) was an action on a policy of insurance, in which there was an exception of risks of illicit trade with the Portuguese. The voyage was for such an illicit trade, and the vessel, in pursuance of that purpose, came to anchor within about four leagues of the Portuguese coast; and the master went on shore on business, where he was arrested, and the vessel was afterwards seized at her anchorage and condemned. The owner sought to recover for the condemnation. The court held that it was not necessary for the defendants to prove an illicit trade begun, but only that the risks excluded were incurred by the prosecution of such a voyage. It is true, that Chief-Justice Marshall admitted the right of a nation to secure itself against intended violations of its laws, by seizures made within reasonable limits, as to which, he said, nations must exercise comity and concession, and the exact extent of which was not settled; and, in the case before the court, the four leagues were not treated as rendering the seizure illegal. This remark must now be treated as an unwarranted admission. The result of the decision is, that the court did not undertake to pronounce judicially, in a suit on a private contract, that a seizure of an American vessel, made at four leagues, by a foreign power, was void and a mere trespass. In the subsequent case of Rose *v.* Himely (Cranch, iv, 241), where a vessel was seized ten leagues

from the French coast, and taken to a Spanish port, and condemned in a French tribunal under municipal and not belligerent law, the court held that any seizures for municipal purposes beyond the territory of the sovereign are invalid; assuming, perhaps, that ten leagues must be beyond the territorial limits for all purposes. In Hudson *v.* Guestier (Cranch, iv, 293), where it was agreed that the seizure was municipal, and was made within a league of the French coast, the majority of the court held that the jurisdiction to make a decree of forfeiture was not lost by the fact that the vessel was never taken into a French port, if possession of her was retained, though in a foreign port. The judgment being set aside and a new trial ordered, the case came up again, and is reported in Cranch, vi, 281. At the new trial the place of seizure was disputed; and the judge instructed the jury, that a municipal seizure, made within six leagues of the French coast, was valid, and gave a good title to the defendant. The jury found a general verdict for the defendant, and exceptions were taken to the instructions. The Supreme Court sustained the verdict; not, however, upon the ground that a municipal seizure made at six leagues from the coast was valid, but on the ground that the French decree of condemnation must be considered as settling the facts involved; and if a seizure within a less distance from shore was necessary to jurisdiction, the decree may have determined the fact accordingly, and the verdict in the circuit court did not disclose the opinion of the jury on that point. The judges differed in stating the principle of this case and of Rose *v.* Himely, and the report leaves the difference somewhat obscure.

"This subject was discussed incidentally in the case of the Cagliari, which was a seizure on the high seas, not for violation of revenue laws, but on a claim, somewhat mixed, of piracy and war. In the opinion given by Dr. Twiss to the Sardinian Government in that case, the learned writer refers to what has sometimes been treated as an exceptional right of search and seizure, for revenue purposes, beyond the marine league, and says that no such exception can be sustained as a right. He adds: 'In ordinary cases, indeed, where a merchant ship has been seized on the high seas, the sovereign whose flag has been violated waives his privilege, considering the offending ship to have acted with *mala fides* towards the other state with which he is in amity, and to have consequently forfeited any just claim to his protection.' He considers the revenue regulations of many states, authorizing visit and seizure beyond their waters, to be enforceable at the peril of such states, and to rest on the express or tacit permission of the states whose vessels may be seized.

"It may be said that the principle is settled that municipal seizures cannot be made, for any purpose, beyond territorial waters. It is also settled that the limit of these waters is, in the absence of treaty, the marine league or the cannon-shot."

But there can be no question, as has been said, that there may be municipal seizures of United States vessels, under the United States revenue laws, outside of the three-mile limit.

Russia having asserted, in 1822–'24, an exclusive jurisdiction over the northwest coast and waters of America from Behring Strait to the fifty-first degree of north latitude, this claim was resisted by the United States and Great Britain, and was surrendered, in a convention between Russia and the United States, in April, 1824, for ten years (not sub-

sequently technically renewed), and in a convention between Great Britain and Russia, in February, 1825, for ten years, re-established by the treaty of June 11, 1843. The Russian claim was disputed by Mr. J. Q. Adams in his note to the Russian minister, of March 30, 1822.

(See 64 An. Reg., 576–84; Brit. and For. St. Pap., 1824–'25, vol. 12, pp. 38, 595; Abdy's Kent (1878), 97.)

As to the pretensions of Russia, above stated, to control the northwest Pacific, from Behring Strait to the fifty-fourth degree of latitude, and of the adjacent islands, see Calvo Droit Int., 3d ed., vol. 3, 323.

The ukase of Emperor Alexander of Russia, of September, 1821, claiming the waters on the northwestern coast of America to the extent of one hundred Italian miles from shore, is discussed in 2 Lyman's Diplomacy of the United States, chap. xi.

This ukase was the cause of long discussions between Russia, the United States, and Great Britain; discussions which terminated in a treaty between the United States and Russia, signed April 17, 1824, and ratified January 11, 1825. This treaty (now superseded in this respect) contains the following provisions:

ARTICLE I.

It is agreed that, in any part of the Great Ocean, commonly called the Pacific Ocean, or South Sea, the respective citizens or subjects of the high contracting Powers shall be neither disturbed nor restrained, either in navigation or in fishing, or in the power of resorting to the coasts, upon points which may not already have been occupied, for the purpose of trading with the natives, saving always the restrictions and conditions determined by the following articles.

ARTICLE II.

With a view of preventing the rights of navigation and of fishing exercised upon the Great Ocean by the citizens and subjects of the high contracting Powers from becoming the pretext for an illicit trade, it is agreed that the citizens of the United States shall not resort to any point where there is a Russian establishment, without the permission of the governor or commander; and that, reciprocally, the subjects of Russia shall not resort, without permission, to any establishment of the United States upon the Northwest coast.

ARTICLE III.

It is moreover agreed that, hereafter, there shall not be formed by the citizens of the United States, or under the authority of the said States, any establishment upon the Northwest coast of America, nor in any of the islands adjacent, to the north of fifty-four degrees and forty minutes of north latitude; and that, in the same manner, there shall be none formed by Russian subjects, or under the authority of Russia, south of the same parallel.

ARTICLE IV.

It is, nevertheless, understood that during a term of ten years, counting from the signature of the present convention, the ships of both Powers, or which belong to their citizens or subjects respectively, may reciprocally frequent, without any hindrance whatever, the interior seas, gulfs, harbors, and creeks, upon the coast mentioned in the preceding article, for the purpose of fishing and trading with the natives of the country.

ARTICLE V.

All spirituous liquors, fire-arms, other arms, powder, and munitions of war of every kind, are always excepted from this same commerce permitted by the preceding article; and the two Powers engage, reciprocally, neither to sell, nor suffer them to be sold, to the natives by their respective citizens and subjects, nor by any person who may be under their authority. It is likewise stipulated that this restriction shall never afford a pretext, nor be advanced, in any case, to authorize either search or detention of the vessels, seizure of the merchandize, or, in fine, any measures of constraint whatever towards the merchants or the crews who may carry on this commerce; the high contracting Powers reciprocally reserving to themselves to determine upon the penalties to be incurred, and to inflict the punishments in case of the contravention of this article by their respective citizens or subjects.

"This treaty excluded the right of the United States to make new settlements on the northwest shore of America, and the adjacent islands north of 54 degrees 40 minutes of latitude, and of Russia to make settlements south of that line. An analogous treaty was concluded in the same year between Great Britain and Russia. By these treaties the free navigation of the Pacific was recognized. As to new settlements, they bound only the contracting parties."

Fiore, Droit Int. 2d ed. by Antoine, 1885, § 726.

The territorial authority of a nation extends over the contiguous seas, certainly within the range of cannon-shot, and perhaps further, according to the nature of the coast.

Church v. Hubbart, 2 Cranch, 187, 235. (See the Ann, 1 Gall., 62.)

There is no fixed rule prescribing the distance from the coast within which a nation can make seizures to prevent the violation of its laws.

Church v. Hubbart, 2 Cranch, 187, 235.

"The territorial jurisdiction of a nation over waters within its jurisdiction, and within the three-mile zone of the shore, does not extend to vessels using the ocean as a highway and not bound to a port of the nation. And a vessel may pass, in its voyage along the shore of another nation, without subjecting itself to the law of the littoral sovereign, and retain all the rights given by the law of its flag. This authority or claim of jurisdiction over the ocean within the three-mile zone of the coast is said and shown by Lord Chief-Justice Cockburn to be a shrinkage of the claim of jurisdiction over the *mare clausum*, which was never acknowledged, and is now abandoned, and to exist only for the protection and defense of the coast and its inhabitants. Mr. Webster, in his letter to Lord Ashburton, quoted in Wheaton's Law of Nations, *infra*, § 38, says: 'A vessel on the high seas, beyond the distance of a marine league from the shore, is regarded as part of the territory of the nation to which she belongs, and subjected, exclusively, to the jurisdiction of that nation. If against the will of her master or owner she be driven or carried nearer to the land, or even into port, those who have, or ought to have control over her, struggling all the while to keep her upon the high seas,' she remains 'within the exclusive jurisdiction of her Government.' This was written in the case of the Creole, an American vessel, carried into Nassau by persons who had been slaves in Virginia. The same reason which governs in the case of a vessel driven by weather or by

violence within the three-mile jurisdiction, applies to a vessel the necessities of whose voyage compel her to pass within the same zone."

Henry on Adm. Jur. (1885), § 89.

On the other hand, the sovereign of the shore has a right, by international law, to require that no action be taken by ships of other friendly nations by which his subjects should be injured, or the peace of the shore disturbed.

That a sovereign has a police jurisdiction over all offenses committed by means of shot from a ship taking effect on shore is maintained by very high authority. "The extension," says Perels (Das Internationale öffentliche Seerecht der Gegenwart, § 13), "of the line depends on the range of cannon-shot at the particular period. It is, however, at such period the same for all coasts."

To this effect is cited Martens, Précis i, p. 144; Bluntschli, § 302; Heffter, § 75; Klüber, § 130; Ortolan, I, 153, and Schialtarella, Del Territorio, p. 8.

Mr. Lawrence thus states the rule: "The waters adjacent to the coast of a country are deemed within its jurisdictional limits only because they can be commanded from the shore."

Lawr. Wheaton, 846.

According to Gessner: "Les droits des riverains ont été augmentés par l'invention des canons rayes."

As far as a State can protect itself, so far does its jurisdiction extend.

Kent, i, p. 158.

"La plus forte portée de canon selon le progrès commun de l'art à chaque époque."

"Inasmuch as cannon-shot can now be sent more than two leagues, it seems desirable to extend the territorial limits accordingly. *The ground of the rule is the margin of sea within reach of the land forces or from which the land can be assailed.*"

Field Int. Code, 2d ed., § 28.

"It is probably safe to say," says Mr. Hall (Int. Law, 127), "that a state has the right to extend its territorial waters from time to time at its will, with the now increased range of its guns, though it would undoubtedly be more satisfactory that an arrangement upon the subject should be arrived at by common consent."

See 32 Alb. Law Jour., 104.

The reason originally given for the three-mile limit was that cannon-balls were, in those days, not known to exceed three miles in range, and that if the three-mile limit was secured, a sovereign would be fully able to protect his shores from marauders, or from belligerent cannonade at sea from which he, a neutral, might suffer. This position, as is mentioned by Mr. Seward, was taken by the French Government at the time of the sea-duel between the Kearsarge and the Alabama, in 1864.

See Mr. Dayton to Mr. Seward, June 17, 1864; Dip. Corr., 1864.

Nor does this reason apply exclusively to hostile operations. We can conceive, for instance, of a case in which armed vessels of nations, with whom we are at peace, might select a spot within cannon-range of our coast for the practice of their guns. A case of this character took place not long since in which an object on shore was selected as a point at which to aim, for the purpose of practicing, projectiles to be thrown from the cruiser of a friendly power. Supposing such a vessel to be four miles from the coast, could it be reasonably maintained

that we have no police jurisdiction over such culpable negligence? Or could it be reasonably maintained that marauders, who at the same time would not be technically pirates, could throw projectiles upon our shores without our having jurisdiction to bring them to justice? The answer to such questions may be drawn from the reason that sustained a claim for a three-mile police belt of sea in old times. This reason authorizes the extension of this belt for police purposes to nine miles, if such be the range of cannon at the present day. This, it should be remembered, does not subject to our domestic jurisdiction all vessels passing within nine miles of our shores, nor does it by itself give us an exclusive right to fisheries within such a limit, or within such greater limit as greater improvements in gunnery might suggest; nor would it authorize the Executive to warn off, within these extended limits, foreign ships by a proclamation similar to that of President Jefferson, in 1807, so as to prevent them from communicating with the shore. For the latter purposes the three-mile limit is the utmost that can be claimed.

By the British territorial waters act of 1878 "an offense committed by a person, whether he is or is not a subject of Her Majesty, on the open sea, within the territorial waters of Her Majesty's dominions, is an offense within the jurisdiction of the admiral, although it may have been committed on board or by means of a foreign ship;" and it was declared in the preamble of the statute that "the rightful jurisdiction of Her Majesty, her heirs and successors, extends, and *has always extended*, over the open seas adjacent to the coasts of the United Kingdom, and of all other parts of Her Majesty's dominions, *to such a distance as is necessary for the defense and security of such dominions*." It is, however, further provided that "the territorial waters of Her Majesty's dominions, in reference to the sea, means such part of the sea adjacent to the coast of the United Kingdom or the coast of some other part of Her Majesty's dominion, *as is deemed by international law to be within the territorial sovereignty of Her Majesty, and for the purpose of any offense declared by this act to be within the jurisdiction of the admiral, any part of the open sea within one marine league of the coast, measured from low-water mark, shall be deemed to be open sea within the territorial waters of Her Majesty's dominions*." This statute in one place apparently makes the test to consist in the protection of subjects, in another place falls back on the marine league. So far as concerns persons injured on shore, the former is on principle the test; and it may also be argued to be the test in reference to belligerent cruisers undertaking to cannonade each other within cannon-shot of the shore. So far as concerns injuries at sea, inflicted by a foreigner on a subject, the question is still open.

See 2 Steph. Hist. Cr. Law, ch. xvi; Perels, § 13.
See, also, R. *v.* Keyn, L. R. 2 Ex. D., 63; 13 Cox., C. C., 403, cited and criticized, Whart. Com. Am. Law, § 186; and see 3 Phill. Int. Law, 3d ed., 565; Whart. Conf. of Laws, 2d ed., § 818. See, also, more fully *infra* § 35 *a*.

VIII. *SHIP NATIONALIZED BY FLAG.*

§ 33.

As to impressment, see *infra*, § 331.
As to ship-papers and sea-letters, see *infra*, § 406.
As to visitation and search, see *infra*, §§ 325–7.
As to jurisdiction over crimes at sea, see *infra*, § 41.

"Every merchant vessel on the seas is rightfully considered as part of the territory of the country to which it belongs. The entry, therefore, into such vessel, being neutral, by a belligerent, is an act of force,

and is *prima facie* a wrong, a trespass, which can be justified only when done for some purpose allowed to form a sufficient justification by the law of nations. But a British cruiser enters an American merchant vessel in order to take therefrom supposed British subjects, offering no justification therefor, under the law of nations, but claiming the right under the law of England respecting the King's prerogative. This cannot be defended. English soil, English territory, English jurisdiction, is the appropriate sphere for the operation of English law. The ocean is the sphere of the law of nations, and any merchant vessel on the seas is, by that law, under the protection of the laws of her own nation, and may claim immunity unless in cases in which that law allows her to be entered or visited."

Mr. Webster, Sec. of State, to Lord Ashburton, Aug. 8, 1842. MSS. Notes, Great Britain; 6 Webster's Works, 317. For other portions of this letter, see *infra*, § 331. See App., Vol. III, § 33.

"In the letter of Mr. Webster to Lord Ashburton, of the 1st August, 1842, the principles of the law of nations which apply to the subject were discussed with great clearness and ability. To that letter I refer you. It will be perceived that Mr. Webster does not 'propose the introduction of any new principle into the law of nations.' He contends that 'a vessel on the high seas, beyond the distance of a marine league from the shore, is regarded as part of the territory of the nation to which she belongs, and subjected exclusively to the jurisdiction of that nation; and consequently, if those who have charge of her endeavor, in good faith, to keep her at sea, that is, within that exclusive jurisdiction, and if, contrary to their will, she be forced within another jurisdiction by stress of weather, by violence, or other necessity, she does not cease to be within the jurisdiction of her own country. In this case, however, such jurisdiction is not *exclusive* to all purposes. 'For any unlawful acts done by her while thus lying in port, and for all contracts entered into while there, by her master and owners, she and they must doubtless be answerable to the laws of the place.'

"Mr. Webster further contends that 'by the comity of the law of nations, and the practice of modern times, merchant vessels entering open ports of other nations for the purpose of trade, are presumed to be allowed to bring with them and to retain, for their protection and government, the jurisdiction and laws of their own country.' These, of course, extend both over persons and things, subject always to the laws of the place, in cases of crimes, contracts, &c., as above mentioned. The right here claimed is not in derogation of the sovereignty of the place where the vessels may be, but is presumed to be allowed by that sovereignty."

Mr. Upshur, Sec. of State, to Mr. Everett, Nov. 28, 1843. MSS. Inst., Great Britain.

"I claim a total immunity for the vessels of the United States 'upon the common and unappropriated parts of the ocean,' to use the expression of Lord Stowell, in time of peace, under all circumstances. There

is no case in which a forcible entrance into them can be justified by another power; that is, there is no case in which such entry is a lawful act. It may be an excusable one under peculiar circumstances, of entrance and of conduct, which might well induce the aggrieved party to renounce all claim for reparation. As, for instance, if a piratical vessel were known to be cruising in certain latitudes, and a national armed ship should fall in with a vessel sailing in those regions, and answering to the description given of the pirate, the visitation of a peaceable merchantman in such case, with a view to ascertain her true character, could give no reasonable cause of offense to the nation to which she might belong, and whose flag she carried."

Mr. Cass, Sec. of State, to Mr. Osma, May 22, 1858. MSS. Notes, Peru. (See *infra*, § 327.)

"The jurisdiction of every independent nation over the merchant vessels of other nations lying within its own harbors is absolute and exclusive. Nothing but its authority can justify a ship of war belonging to another nation in seizing or detaining a vessel thus situated for any cause or pretext whatever. * * * There is no power on earth which would assert this principle with more determination and energy than the United States, and, therefore, there is no power which ought more carefully to avoid any violation of it in their conduct towards other nations."

Mr. Buchanan, Sec. of State, to Mr. Wise, Sept. 27, 1845. MSS. Inst., Brazil.

"Referring to the case of Albert Allen Gardner, master of the American ship Anna Camp, tried in the county court at Liverpool, in May last, copies of certain papers relating to which were forwarded to you by General Badeau, I desire to call your attention to the claim of jurisdiction put forth by the local common-law courts of Great Britain in this and other similar cases.

"It seems to be claimed by the courts in question that their jurisdiction extends to the hearing and determining of causes arising upon complaints between masters and mariners of vessels of the United States, not only when the occurrences upon which the complaint may be founded took place within British ports or waters, but also when the offense which is made the ground of action was committed on board the vessel on the high seas.

"The exercise of this jurisdiction by the local common-law courts at Liverpool has already been the cause of much annoyance and, in some instances, serious inconvenience to masters and owners of American vessels, and if persisted in may affect injuriously the interests of American shipping.

"The courts of the United States, even those possessing admiralty jurisdiction, have repeatedly declined to take cognizance of cases of this nature when the parties to the action were seamen and masters of foreign vessels. The reasons assigned by the courts of the United States for refusing to entertain jurisdiction of such cases are believed

to be in accord with the general practice of other maritime powers, and supported by the principles of international maritime law, as understood and interpreted by the highest judicial authority of maritime nations.

"In a case of controversy between the crew and the master of the British ship Reliance, sought to be prosecuted before the district court of the United States in the city of New York, the master and crew in question being British subjects, the court, in declining to entertain the case, says: 'The admiralty courts of the United States will decline jurisdiction of controversies arising between foreign masters and owners unless the voyage has been broken up or the seamen unlawfully discharged. It is expected,' continues the same judge, 'that a foreign seaman seeking to prosecute an action of this description in the courts of this country will procure the official sanction of the commercial or political representative of the country to which he belongs, or that good reasons will be shown for allowing his suit in the absence of such refusal. This court,' adds the learned judge, 'has repeatedly discountenanced actions by foreign seamen against foreign vessels not terminating their voyages at this port as being calculated to embarrass commercial transactions and relations between this country and others in friendly relations with it.'

"The justice and wisdom of those observations of the court will be at once obvious. The laws of the United States, and the instructions of this Department to its consular officers resident in foreign countries, provide with more than ordinary care for the adjustment of all questions of controversy which may arise between the masters and crews of American vessels growing out of the relations of such masters and seamen on board the vessels while on the high seas or in the ports of foreign powers; and where offenses are committed by either master or mariner, or other questions of dispute between them arise which are beyond the province of the consul to determine, ample provision is made by law for the trial and punishment of such offenses and the settlement of those questions by the courts of the United States. These provisions of the law and consular regulations of this country are believed, moreover, to be in general harmony with existing laws and reglations of Great Britain on this subject.

"This Department, as you are aware, has repeatedly brought to the attention of Her Majesty's Government the necessity of a consular convention between the two countries, the existence of which would do much to obviate in future occurrences such as that now complained of. It is not designed in this connection to renew any discussion of that subject now, as you are fully informed that this Government is now, as it has been heretofore, ready to enter into a convention on that subject.

"You will avail yourself of the earliest opportunity to bring the question involved in the case of Captain Gardner to the attention of

Her Majesty's Government, with the expression of the hope indulged by the Government of the United States that measures will be adopted to prevent in future the exercise of jurisdiction by the local common-law courts of Great Britain in controversies arising between the masters and seamen of vessels of the United States growing out of occurrences on board their vessels on the high seas."

Mr. Fish, Sec. of State, to Mr. Schenck, Nov. 8, 1873. MSS. Inst., Great Britain.

"Referring to my instruction of the 8th of November, 1873 (No. 476), in relation to jurisdiction assumed by the local common-law courts of Great Britain, in cases of disputes arising between the masters and crews of merchant vessels of the United States, I now transmit to you a copy of a dispatch recently received by the Department from the United States vice-consul at Hong-Kong, together with a copy of its inclosures, relating to a case between Joseph D. Ellis, the steward of the American ship Lathley Rich, and Thomas Mitchell, the master of that vessel, in which the jurisdiction complained of was assumed and exercised by the local courts of that colony. Complaints have also recently reached the Department from Melbourne and Singapore of a similar assumption of jurisdiction by the local courts of these colonies.

"The laws of the United States make ample provision for the regulation and protection of the seamen of the United States, and for the settlement of all disputes which may arise between the masters and crews of American vessels before the consuls of the United States resident in the ports of foreign countries, carefully reserving, at the same time, to the parties all the rights and remedies that are secured to them by law through the courts of the United States.

"Regulations similar in character for the government and police of their merchant marine are established by the Government of Great Britain, and, indeed, by the Governments of most, if not all, commercial nations, and this Government has never failed to recognize the effective beneficence of such domestic regulations in promoting discipline, order, and good government on vessels engaged in the merchant service. They rest upon principles of convenience, international comity, and well-settled rules of public law. The claim of jurisdiction made by the local common-law courts of Great Britain, and particularly by the colonial tribunals, is conceived to be in contravention of those principles; and the exercise of it, moreover, calculated to work serious injury to the commerce of the United States in those ports where it obtains, and to the interests of the vessels which, from time to time, become the subjects of such unauthorized interference.

"Acting in the spirit of these views, this Government has on several occasions, when interference of a similar character by local courts or magistrates of this country, in the case of British vessels, has been brought to its notice by Her Majesty's Government, promptly made such complaints the subject of inquiry and correction.

"On the 19th of February, 1873, Her Majesty's minister at this capital brought to the attention of the Department a case, occurring at Galveston, Texas, in which the master of the British ship Bucephalus had been arraigned before a local State magistrate, who happened, also, to be a United States commissioner, upon the complaint of one Thomas Moffit, a seaman of that vessel, for an alleged assault, commenced while the ship was at sea and continued after her arrival at that port. The case was referred by this Department to the Attorney-General, and that officer instituted an immediate investigation. It was found, upon inquiry, that the magistrate in question had instituted the proceedings in his capacity of justice of the peace, an office which he held under the laws of the State of Texas, and not as United States commissioner, and that upon being advised by the United States district attorney for that district that it was not a matter of which either the authorities of the United States or of the State should take cognizance, the master being amenable to the laws of the nation to which his vessel belonged, the complaint was at once dismissed by the magistrate. In the same note the British minister complained of certain proceedings of two United States commissioners at New Orleans with reference to the discharge of seamen from a British vessel at that port, the seamen in question being citizens of the United States and claiming the interposition of the local authorities on that ground. These officers were also instructed that such interference with the police regulations established by Great Britain for the government of their merchant vessels was contrary to the policy of this Government, and that even in cases where the right of the local magistrates to assert the jurisdiction was undoubted, its exercise should be avoided. These instructions have been adhered to, and there has since been no recurrence at that port of the interference then complained of.

"In another case, which occurred at Charleston, S. C., and which was brought to the attention of the Department by Sir Edward Thornton in a note of the 6th of May, 1874, in which it appeared that John Bogan, a seaman of the British ship Amelie, complained before a United States commissioner of ill treatment received at the hands of the captain of that vessel, it turned out, upon inquiry, that the commissioner was not advised of the nationality of the vessel when he issued his warrant of arrest, and, that as soon as the fact was disclosed to him that the occurrences complained of took place upon a British vessel, he promptly advised the United States district attorney of that circumstance, and, upon the advice of the latter officer, immediately dismissed the complaint.

"In these several cases, occurring in the United States, it must also be noticed that the proceedings were taken by petty or inferior magistrates, who may not reasonably be supposed to be learned in the law, while in the case of the Lathley Rich, at Hong-Kong, the proceedings were commenced before a *nisi prius* court and ultimately heard and deter-

mined on appeal before the supreme court of the colony, and the same is true of some cases which occurred at Melbourne.

"The instances thus given, taken in connection with the practice and doctrine laid down by Mr. Justice Betts in the United States court for New York, sitting in admiralty, to which I adverted in my No. 476 to you, serves to show the uniform regard in which these principles of international comity and convenience have been held by the Government of the United States.

"It is therefore with regret that I notice the absence of a reciprocal respect for these principles in the administration of the local courts of Great Britain, and particularly in Her Majesty's colonies, in their proceedings towards American merchant vessels.

"Bearing in mind the views expressed in my former instruction (No. 476), it is desired that you will take the earliest favorable opportunity of bringing to the attention of Her Majesty's Government the case of the Lathley Rich, now transmitted in connection with the general question of the jurisdiction referred to, and you will represent to Earl Derby the interest felt by this Government in the adoption of such measures by that of Great Britain as will prevent a recurrence of such cases, and be effective, especially as regards the colonial courts, in putting a stop to this exercise of jurisdiction, at once injurious to the interests of the vessels which may be the subjects of it, and the possible cause of international inconvenience to two nations so largely interested in the commerce of the world as are those of the United States and Great Britain."

Mr. Fish, Sec. of State, to Mr. Schenck, March 12, 1875. MSS. Inst., Great Britain; For. Rel., 1875.

The position that a ship at sea is a part of the country whose flag she bears is assailed in the North American Review of July, 1862 (vol. 95, 8), and the reason is given that such ships on entering ports are subject in police matters to the law of the port. But the rule itself is subject to this limitation, being only applicable to "ships at sea." It would be as logical to deny the allegiance of a subject to his sovereign on the ground that when he sojourns in a foreign land he becomes bound, when in that land, by its police laws.

A ship cannot draw around her a line of jurisdiction and appropriate so much of the ocean as she may deem necessary for her protection, and prevent any nearer approach.

The Marianna Flora, 11 Wheaton, 1.

A ship at sea is regarded in international law as a portion of the territory of the nation whose flag she carries and as subject to that nation's jurisdiction.

Crapo v. Kelly, 16 Wallace, 610.

"A vessel at sea is considered as part of the territory to which it belongs when at home. It carries with it the local legal rights and legal

jurisdiction of such locality. All on board are endowed and subject accordingly."

Swayne, J.; Wilson v. McNamee, 102 U. S., 574; S. P., Maclachlan, Merch. Ship., 3d ed., 64, 65, 140.

A person on board of an American vessel is, in contemplation of law, within the territory and jurisdiction of the United States.

Re Moncan, 14 Fed. Rep'r, 44.

"The extraterritorial jurisdiction of a nation, exclusive or concurrent, extends over the following places:

"1. All the land or water included within the lines of its fleets or armies, exclusive in respect to its own members, and concurrent with that of the nation owning the territory, in respect to members of that or of any other nation.

"2. All ships bearing its national character, exclusive except in the case of a private ship within the limits of another nation, and in that case, concurrent with such nation."

"4. Vessels belonging to the citizens of the nation on the high seas, and public vessels, wherever found, have some of the attributes of territory.

Field, Int. Code, § 309.

"In regard, however, to the territorial character of vessels it is necessary to be more definite, for if they have this property in some respects but not in all, only false and illogical deductions can be drawn from an unqualified statement. Is it true, then, that they are identical in their properties with territory? If a ship is confiscated on account of piracy or of violation of custom-house laws in a foreign port, or is there attached by the owner's creditor and becomes his property, we never think that territory has been taken away. For a crime committed in port a vessel may be chased into the high seas and there arrested, without a suspicion that territorial rights have been violated, while to chase a criminal across the borders and seize him on foreign soil is a gross offense against sovereignty. Again, a private vessel when it arrives in a foreign port, ceases to be regarded as territory, unless treaty provides otherwise, and then becomes merely the property of aliens. If injury is done to it, it is an injury which indirectly affects the sovereign of the alien, whereas injuries to territory, properly so called, affect the public power in an immediate manner. It is unsafe, then, to argue on the assumption that ships are altogether territory, as will appear, perhaps, when we come to consider the laws of maritime warfare. On the other hand, private ships have certain qualities resembling those of territory: (1) As against their crews on the high seas; for the territorial or municipal law accompanies them as long as they are beyond the reach of other law, or until they come within the bounds of some other jurisdiction. (2) As against foreigners, who are excluded on the high seas from any act of sovereignty over them, just as if they were a part of the soil of their country. Public vessels stand on higher ground; they are not only public property, built or bought by the Government, but they are, as it were, floating barracks, a part of the public organism, and represent the national dignity, and on these accounts, even in foreign ports, are exempt from the local jurisdiction. In both cases, however, it is on account of the crew, rather than of the

ship itself, that they have any territorial quality. Take the crew away, let the abandoned hulk be met at sea; it now becomes property, and nothing more."

Woolsey, Int. Law, § 54.

IX. *CRIMES AT SEA SUBJECT TO COUNTRY OF FLAG*

§ 33a.

"I have no doubt that an offense, committed on board a public ship of war, on the high seas, is committed within the jurisdiction of the nation to whom the ship belongs. How far the President of the United States would be justifiable in directing the judge to deliver up the offender is not clear. I have no objection to advise and request him to do it."

President Adams to Mr. Pickering, Sec. of State, May 21, 1799; 8 John Adams's Works, 651.

[The district judge of South Carolina had declined to deliver up to Sir Hyde Parker a seaman who had been engaged in a mutiny and murder of the officers of the British frigate Hermione.]

As to Robbins' case, see *infra*, § 271a.

"I inclose herewith a copy of a dispatch recently received from A. C. Litchfield, esq., consul-general of the United States at Calcutta, in relation to the case of one John Anderson, an ordinary seaman on board the American bark C. O. Whitmore, who, it appears, stabbed and killed the first officer of the ship on the 31st of January last, while that vessel was on her way from New York to Calcutta, sixteen days from her port of departure, and on the high seas in latitude 25° 35′ N. and longitude 35° 50′ W.

"You will perceive that the consul-general invoked the aid of the local police authorities in securing the safe custody of the accused, who was a prisoner of the United States, until he could complete the necessary arrangements for sending him to this country for trial, against whose municipal laws only he was accused of having offended, and that while thus in the temporary custody of the local police, the colonial authorities took judicial cognizance of the matter, claiming, under the advice of the advocate-general of the colony, that, under a colonial statute, which confers upon the courts of the colony jurisdiction of crimes committed by a British subject on the high seas, even though such crimes be committed on the ship of a foreign nation, and that inasmuch as the accused, although appearing on the ship's articles under the name of John Anderson, subject of Sweden, had declared that his real name was Alfred Hussey, and that he was a native of Liverpool and therefore a British subject, the case came within the jurisdiction of those courts.

"The matter is now believed to have reached that point in the judicial proceedings where effective measures for asserting the jurisdic-

tional rights of the United States would be unavoidable in this particular case. And whilst I entertain no doubt that the accused will receive as fair a trial in the high court of Calcutta, where it is understood he is to be tried, as he would in the circuit court of the United States, in which tribunal he would be arraigned were he sent here for trial, I deem it proper, at the same time, to instruct you to bring the question to the attention of her Majesty's Government, in order to have it distinctly understood that this case cannot be admitted by this Government as a precedent for any similar cases that may arrise in the future. No principle of public law is better understood nor more universally recognized than that merchant vessels on the high seas are under the jurisdiction of the nation to which they belong, and that as to common crimes committed on such vessels while on the high seas, the competent tribunals of the vessel's nation have *exclusive* jurisdiction of the questions of trial and punishment of any person thus accused of the commission of a crime against its municipal laws; the nationality of the accused can have no more to do with the question of jurisdiction than it would had he committed the same crime within the geographical territorial limits of the nation against whose municipal laws he offends. The merchant ship, while on the high seas, is, as the ship of war is everywhere, a part of the territory of the nation to which she belongs.

"I pass over the apparent breach of comity in the proceeding of the colonial officials as being rather the result of inadvertence and possible misconception on the part of the Government law officer of the colony, than any design to question the sovereignty of the United States in this or cases of a similar nature."

Mr. Evarts, Sec. of State, to Mr. Welsh, July 11, 1879. MSS. Inst., Great Brit.; For. Rel., 1879.

That a crime by a foreigner in a United States ship is cognizable by the United States, see, further, Whart. Cr. Law, § 269.

Cf. notice of Ross' case in President Arthur's first annual message, Dec. 5, 1881, *infra*, § 125.

"Referring to my instruction No. 328, of the 11th instant, in relation to the case of John Anderson, *alias* Alfred Hussey, and the claim of jurisdiction advanced and exercised in relation thereto by the high court of Calcutta, a British tribunal, notwithstanding that the accused was a seaman upon the American bark C. O. Whitmore, and the crime for which he was tried was committed on the high seas, I have now to transmit for your further information, and as material to the intelligent discussion of the points involved, should Her Majesty's Government provoke argument thereon, copy of an additional dispatch, dated the 10th ultimo, received from Consul-General Litchfield, in which the later proceedings of the high court, comprising further assertion and exercise of jurisdictional power in the premises, are so fully set forth that it is found unnecessary to your understanding of the case to send you transcript of the voluminous appendices transmitted by the consul-general.

"Pending the reply of Her Majesty's Government to the dispassionate representations you have already been directed to make, I have no further observations to add to those of the consul-general than to remark that, while the verdict of the jury, convicting the man of manslaughter, seems to have been technically right as to the degree of the crime committed, the partiality and unfairness of the proceedings, which this Government had confidently hoped would be marked by the most signal impartiality and fairness, cannot but be deduced from the result of the trial. I refer especially to the keeping back of the testimony of witnesses who would have shown aggravating circumstances of guilt; in the notably strong recommendation to mercy; and, more than all, in the character of the sentence, a purely nominal punishment, such as would be usually inflicted for a slight contempt of court, and unheard of before in any British court as a measure of the penalty for manslaughter, the conviction for which rested on the verdict of a jury, the prisoner having been set free within forty-eight hours, without even the form of executive clemency. These facts are here thought to justify what might otherwise seem to be the heated and indignant comments of Mr. Litchfield on the affair; and should the assumption of British jurisdiction in the case be defended by Her Majesty's Government, the circumstances adverted to would seem proper to be brought to Lord Salisbury's attention, with all the temperance of representation permitted by the facts themselves, and as justifying the ground taken, with respect to such assumption of jurisdiction, in my previous instruction No. 328."

Mr. Evarts, Sec. of State, to Mr. Welsh, July 29, 1879. MSS. Inst., Great Brit.; For. Rel, 1879.

"I have to acknowledge the receipt of your dispatch No. 17, of the 16th ultimo, inclosing a copy of the correspondence between your legation and the foreign office in relation to the case of John Anderson, who was tried in Calcutta for a crime alleged to have been committed on board a vessel of the United States on the high seas, which correspondence contains an expression of the regret of Her Majesty's Government that the action of the authorities at Calcutta in the case in question should have been governed by a view of the law which, in the opinion of Her Majesty's Government, cannot be supported.

"In reply, I have to instruct you to convey to the proper quarter an expression of this Department's appreciation of the candor and goodwill with which Her Majesty's Government have considered this matter, and to say, moreover, that it has afforded this Government great satisfaction to learn that the action of the authorities of Calcutta in the case of Anderson is to be attributed to a misconception, and not to any design to question the jurisdiction of the United States in that or any similar case."

Mr. Hay, Acting Sec. of State, to Mr. Lowell, July 7, 1880. MSS. Inst., Great Brit.; For. Rel, 1880.

The Government of Chili has no jurisdiction over a merchant vessel of the United States on the high seas so as to enable it to proceed against that vessel or its officers, when in a Chilian port, for cruelty on the high seas to a Chilian subject on board that vessel.

Mr. Frelinghuysen, Sec. of State, to Mr. Logan, Oct. 15, 1883. MSS. Inst., Chili.

Murder or robbery committed on the high seas may be cognizable by the courts of the United States, though committed on board of a vessel not belonging to citizens of the United States, if she had no national character, but was held and possessed by pirates or persons not lawfully sailing under the flag of any foreign nation.

U. S. *v.* Holmes, 5 Wheaton, 412. *Infra*, § 380, *ff.*

Where a gun was fired from an American ship lying in a harbor of one of the Society Islands, killing a person on board a schooner belonging to the natives in the harbor, it was held by Judge Story that the act was, in contemplation of law, committed on board the foreign schooner where the shot took effect, and that jurisdiction of the offense belonged to the foreign Government and not to the courts of the United States. Where a prisoner under such circumstances was sent home for trial, it was held that the court had no jurisdiction.

U. S. *v.* Davis, 2 Sumner, 482.

Offenses committed on the high seas, on vessels belonging exclusively to the subjects of a foreign power, are not punishable in the courts of the United States.

3 Op., 484, Grundy, 1839.

Crimes committed on board a merchant ship on the high seas are triable only by the authorities of the country to which she belongs.

The authorities of a foreign country may, at the instance of a consul from the country to which the ship belongs, assist in detaining the persons charged, but they cannot detain them otherwise.

A fortiori, they cannot go on board the ship and rearrest them after they have been in their custody and have been returned.

The citizenship of the accused does not affect the question of jurisdiction.

8 Op., 73, Cushing, 1856.

See discussion of this case in Mr. Marcy's instructions to Mr. Mason, Sept. 8, 1856. MSS. Inst., France.

"The courts of the United States have no jurisdiction to redress any supposed torts committed on the high seas upon the property of its citizens by a cruiser regularly commissioned by a foreign and friendly power, except where such cruiser has been fitted out in violation of its neutrality. The courts of the captors are open for redress, and an injured neutral may there obtain indemnity for a wanton or

illicit capture. Nor is the jurisdiction of the neutral court enlarged by the fact that the corpus no longer continues under the control of the capturing power. The Estrella, 4 Wheat., 298."

2 Halleck's Int. Law (Baker's ed.), 208.
As to piracy, see *infra*, §§ 380 *ff.*

X. *PORTS OPEN TO ALL NATIONS.*

§ 34.

As to non-intercourse, see *infra*, § 319.
As to embargo and closure of ports, see *infra* § 320.
As to neutral's duty in excluding belligerent operations, see *infra*, § 398.
As to asylum to belligerent ships, see *infra*, § 394.
As to territorial waters in general, see *supra*, § 26.

"It is consistent with the just principles, as it is with the interests of the United States, to receive the vessels of all countries into their ports, to whatever party belonging and under whatever flag sailing, pirates excepted, requiring of them only the payment of the duties, and obedience to the laws while under their jurisdiction, without adverting to the question whether they had committed any violation of the allegiance or laws obligatory on them in the countries to which they belonged, either in assuming such flag, or in any other respect."

Mr. Monroe, Sec. of State, to Mr. De Onis, Jan. 19, 1816. MSS. For. Leg. Notes.

While it was permissible, under the law of nations, for China, during the French-Chinese war, to sink obstructions in Canton River for the purpose of preventing the access of French men-of-war to Canton, such obstructions can only be retained as long as needed for belligerent purposes. Their removal after peace is required, not merely by the treaties entered into by China making Canton an open port, but by the law of nations.

See *infra*, § 361*a*.

Unless closed by local law, the ports of a friendly nation are considered as open to the public ships of all powers with whom it is at peace, and they are supposed to enter such ports, and to remain in them while allowed to remain, under the protection of the Government of the place. The implied license, under which such vessel enters a friendly port, may reasonably be construed, and, it seems to the court, ought to be construed, as containing an exemption from the jurisdiction of the sovereign within whose territory she claims the rights of hospitality.

The Exchange *v.* McFaddon, 7 Cranch, 116, *infra*, § 36.

The hospitality of the ports of the United States, when a neutral, is extended equally to the vessels of each belligerent, when visiting for

purposes of convenience, or when driven to take refuge from storms or a superior naval force.

Mr. Clay, Sec. of State, to Mr. Tacon, Oct. 27, 1827. MSS. For. Leg. Notes. Mr. Clay to Mr. Rebello, Apr. 8, 1828; *ib.*

As to exemptions in cases of entrance through stress of weather, or force, see *infra*, § 38.

XI. *MERCHANT VESSELS SUBJECT TO POLICE LAW OF PORT.*

§ 35.

[See, as to consular jurisdiction in ports, *infra*, § 124.]

Merchant vessels in port are subject to the police law of the port.

Mr. Everett, Sec. of State, to Mr. Ingersoll, Feb. 17, 1853. MSS. Inst., Great Britain.

The abduction by Chilian authorities, in a Chilian port, from a United States whaling ship, of sailors claimed to be Chilians, in time of peace, and without justifiable necessity, is an act at variance with the comity of nations, for which the Chilian Government may justly be held responsible.

Mr. Webster, Sec. of State, to Mr. Peyton, July 2, 1851. MSS. Inst., Chili.

"There is no doubt of the jurisdiction of our officers and tribunals to interfere in the way of prevention or of punishment in breaches of the peace occurring in American waters upon foreign vessels. There is no reason why our police, civil or naval, should hesitate to board a British vessel for the purpose of quelling a mutiny attended with assaults upon the officers or violent resistance to the exercise of their legitimate authority in subjecting refractory seamen to temporary confinement. The difficulty, however, is supposed to arise in cases where seamen simply refuse to work, and where confinement of them would reduce the vessel to a floating jail, without the power of motion. The remedy that is supposed to be wanted is a compulsion upon the men to do their duty—in other words, to enforce a specific obligation of their contract. No officer or tribunal of the United States has the capacity to apply such a remedy except in execution of a treaty or convention, which seems necessary as the basis of laws of Congress regulating the mode of procedure. A treaty is also necessary to justify the detention here of a foreign seaman upon the order of his consul, or otherwise than as a criminal offender.

"For any intervention beyond the limits thus indicated an agreement between the two Governments would seem to be requisite. I have to remark, however, that the question which I have discussed is purely a legal one, upon which I ought to reserve myself for consultation with the Attorney-General."

Mr. Seward, Sec. of State, to Mr. Bruce, Mar. 16, 1866. MSS. Notes, Great Britain.

"The bark and her master being within the jurisdictional limits of the State of Georgia, the master undertook to resist by force civil process of the State issued against him and the owners of the vessel. For this offense against the State a criminal proceeding was instituted, and the captain was arrested. He then gave bond in the civil suit and the criminal prosecution was abandoned. There can, I presume, be no doubt that for the purposes of these legal proceedings the vessel and her master were at the time subject to the jurisdiction of Georgia, and he was bound to submit to the execution of process issued by her regular constituted authorities. I am, therefore, unable to see in the case any ground for complaint by the Spanish Government against the United States."

Opinion of the Attorney-General quoted by Mr. Evarts, Sec. of State, in note to Mr. Mendez, Dec. 27, 1879. MSS. Notes, Spain.

"There has never been the slightest doubt as to the entire legality of extraterritorial jurisdiction when acquired in foreign ports by treaty. The first treaties creating such rights were concluded in 1787 and 1788, almost simultaneously with the adoption of the Constitution, and were understood by the framers of the Constitution as compatible therewith. In the next sixty years several other extraterritorial treaties were concluded, but no law was even deemed necessary to the execution of those treaties until 1808, and then the statute aimed simply to codify the treaty rights acquired in a convenient form; it could not create them. And finally the circuit courts of the United States have fully sustained the constitutionality of the existing statutes."

Mr. Frelinghuysen, Sec. of State, to Mr. Gardiner, Mar. 16, 1883. MSS. Dom. Let.

A merchant vessel, except under some treaty stipulation, has no exemption from the territorial jurisdiction of the harbor in which she is lying.

15 Op., 178, Taft, 1876.

The violation, by the master of an American vessel at a port in Jamaica, of the British revenue laws, is not punishable by any statute of the United States.

16 Op., 283, Devens, 1879.

Unless treaty stipulations provide otherwise, a merchant vessel of one country visiting the ports of another for the purpose of trade is, so long as she remains, subject to the laws which govern them.

U. S. v. Diekelman, 92 U. S., 520.

"In 1856 a case arose in reference to seamen supposed not to be citizens of the United States, who, having committed a mutiny at sea, on board of the American vessel Atalanta, were brought back in the vessel

to Marseilles, where, on the application of the consul of the United States, they were received and imprisoned by the local authorities on shore. Six of them were afterwards, on his application, taken from prison and placed on board of the Atalanta for conveyance to the United States, under charge of crime. Then, with notice to the consul, but in spite of his remonstrances, the local authorities went on board of the Atalanta, forcibly resumed possession of the prisoners, and replaced them in confinement on shore. Mr. Mason, in a note of the 27th of June, 1856, says: 'It is the first instance in which a vessel wearing the flag of the United States, lying in a French port, or a French ship lying in a port of the United States, has, since the date of the treaty, been visited by police officers without the authority of the consul.' (MS. Department of State.) The correspondence between the two Governments having been submitted to the Attorney-General of the United States, he concurred in opinion with the American minister, that the local authority of Marseilles exceeded its lawful power, in substance as well as in form, and that there could be no conflict on the part of France with other powers on account of the nationality of the prisoners, for they were always in the constructive, if not in the actual, custody of the United States. Opinion of Attorneys-General, vol. viii, p. 73."

Lawrence's Wheaton, ed. 1863, p. 207.

"The state of international law on the subject of private vessels in foreign ports * * * may be said to be this: So far as regards acts done at sea before her arrival in port, and acts done on board in port by members of the crew to one another, and so far as regards the general regulation of the rights and duties of those belonging on board, the vessel is exempt from local jurisdiction; but, if the acts done on board affect the peace of the country in whose port she lies, or the persons or property of its subjects, to that extent that state has jurisdiction. The local authorities have a right to visit all such vessels to ascertain the nature of any alleged occurrence on board. Of course, no exemption is ever claimed for injuries done by the vessel to property or persons in port, or for acts of her company not done on board the vessel, or for their personal contracts or civil obligations or duties relating to persons not of the ship's company."

Dana's Wheaton, § 95, note 58.

XII. *CRIMES ON SUCH VESSELS, HOW FAR SUBJECT TO PORT LAW.*

§ 35a.

The sovereign of a port has, by the law of nations, jurisdiction of criminal offenses aboard merchant vessels of such port, which disturb the peace of the port.

See Mr. Van Buren, Sec. of State, to Mr. Roux de Rochelle, Jan. 27, 1831. MSS. For. Leg. Notes. Mr. Bayard, Sec. of State, Jan. 20, 1887, Report, etc., App., Vol. III, § 35a.

An assault committed on board a United States merchant ship in a New Granada port, on a citizen of New Granada, is cognizable by New Granada, and not by the United States.

Mr. Marcy, Sec. of State, to Mr. Paredes, Sept. 27, 1853. MSS. Notes, Colomb.

"As to the jurisdiction over offenses committed on board of a merchant vessel by the officers or company of the vessel, towards each other, while in the harbor or waters of a foreign power, there is considerable diversity of opinions. Some nations yield the jurisdiction in such cases, and some assert it.

"If the United States claim jurisdiction over all offenses committed on board of foreign private vessels in their harbors or waters, they cannot, with consistency, assert the right to have their citizens exempt from the jurisdiction of the local authorities when they commit similar offenses in foreign ports.

"This question of jurisdiction has been under the consideration of the Supreme Court of the United States. The views expressed by that court are those which this Government approves, and is disposed to abide by in its intercourse with foreign nations.

"As a general rule, the jurisdiction of a nation is exclusive and absolute within its own territories, of which harbors and littoral waters are as clearly a part as the land. Restrictions may be imposed upon it by treaties and a few have been yielded by common consent, and thus have come to be regarded as rules of international law.

"There is nothing in our treaty with Peru which debars her from taking cognizance of such an offense as is imputed to Captain Adams. Our right to withdraw him from her general jurisdiction over offenses committed within her territories must be derived, if we have such a right, from the law of nations."

Mr. Marcy, Sec. of State, to Mr. Clay, Aug. 31, 1855. MSS. Inst., Peru.

"We should undoubtedly deny the right of any foreign power to demand the exemption from trial and punishment by our courts, of one of its subjects, who had committed a crime on board of a foreign trading vessel in one of our harbors, though the offense should be one which only affected the officers, crew, or company of that vessel. Circumstances might render it proper to forego the exercise of the right to try such an offender, but still the right would exist, and it would be at our option to yield or enforce the exercise of it.

"This being our position towards all nations where treaty stipulations do not interfere, they can hold the same position towards us without our being able to gainsay it."

Ibid.

"This Government does not apply the doctrine of extraterritoriality to its private or merchant ships in foreign ports, except in cases where it has been conceded by treaty or established usage, and it does not pretend that it has been so conceded in criminal cases to American merchant vessels in British ports. * * *

"While each country can unquestionably exercise jurisdiction in its own ports over the private or merchant vessels of the other, it is presumed there is a mutual disposition on both sides not to exert it in a

way which will interfere with the proper discipline of the ships of either nation. If every complaint of any individual of the crew of the vessel against the officers for ill-treatment is to be taken up by the civil authorities on shore, and these officers prosecuted as criminals, commercial intercourse will be subjected to very great annoyance and serious detriment."

Mr. Marcy, Sec. of State, to Mr. Crampton, Apr. 19, 1856. MSS. Notes, Great Britain.

"The right of the Italian authorities to search a (merchant) vessel in their ports for a person charged with crime is entire, unless it shall have been surrendered by treaty, which was not the fact in this instance. Though the deserter did not prove to be amenable to the jurisdiction of the local authorities, as he was arrested by them at the instance of the British consul, they may have supposed that they were only discharging their duty in the matter."

Mr. Fish, Sec. of State, to Mr. Marsh, May 2, 1876. MSS. Inst., Italy.

"I have the honor to acknowledge the receipt of your note of the 9th instant, in relation to the cases of the captains of the Hungarian merchant vessels Ararat and Mimi P., in which you request, on behalf of your Government, to be put in possession of the views of the Government of the United States on the question of local jurisdiction involved in the case referred to.

"I inclose herewith a copy of an opinion of the Attorney-General of the 9th July last, in response to the request I made of that functionary on the 27th of June of the same year, and of which I had the honor to inform Count Lippe-Weissenfeld.

"Your contention rests on the eleventh article of the consular convention concluded between the United States and the Austro-Hungarian monarchy on the 11th July, 1870. The article referred to is in the following words, namely:

"Consuls, vice-consuls, or consular agents shall have exclusive charge of the internal order of the merchant vessels of their nation. They shall have, therefore, the exclusive power to take cognizance of and to settle all differences which may arise at sea or in port between captains, officers, and crew in reference to wages and the execution of mutual contracts, subject in each case to the laws of their own nation.

"The local authorites shall in no way interfere, except in cases where the differences on board ship are of a nature to disturb the peace and public order in port or on shore, or when persons other than the officers and crew of the vessel are parties to the disturbance. Except as aforesaid, the local authorities shall confine themselves to the rendering of forcible assistance if required by the consuls, vice-consuls, or consular agents, and shall cause the arrest, temporary imprisonment, and removal on board his own vessel of every person whose name is found on the muster-rolls or register of the ship or list of the crew.

"I find no difficulty in agreeing with your statement, that by the general principles of international law private or merchant vessels entering the ports of another nation than their own are subject to the local jurisdiction; and I also recognize at once the convenience and desirability of the rule you suggest as that adopted by France, and followed by some other nations, that local courts should decline to take jurisdiction of cases involving acts of mere interior discipline of the vessel. Such, indeed, has been the course recommended by the executive branch of this Government to the courts, and it gives me pleasure to be able to add that both the Federal and State courts have as a general rule conformed their proceedings in such cases to that suggestion. These tribunals, however, are bound under the Constitution and laws of the United States to entertain every complaint in which is presented a *prima facie* case of violation of the local laws, and it consequently becomes necessary in such cases that the judge should hear the evidence before he is able to determine whether the case is one of mere discipline connected with the ship, or whether it is of such a nature as to involve a disturbance of the public order in port or on shore; and bound by the same constitutional and statutory provisions the executive branch of the Government must refrain from all interference with the judicial tribunals in regard to cases or questions that may be pending before such tribunals. No doubt is entertained, however, but that the declarations of the courts will always be had, and their decisions be always rendered with a due regard for the obligations of the Government under its treaty stipulations with foreign powers.

"The President, I need scarcely add, will ever deem it his duty to give full effect, in spirit and in letter, to the provisions of the convention of July, 1870, between this Government and that of Austria-Hungary, which you so worthily represent."

Mr. Frelinghuysen, Sec. of State, to Baron Schaeffer, Nov. 13, 1883. MSS. Notes, Austria; For. Rel., 1883.

In For. Rel. for 1883, 17 *ff*, is given a full report of the trial of Com. *v.* Ferlan, Philadelphia, 1883, referred to in above note.

As to treaty, *infra*, § 141.

As to consular jurisdiction, *infra*, § 125.

"A merchant vessel in port is within the jurisdiction of the country owning the port, with reference to offenses committed on shore or by any member of the crew on board, when the peace of the port is disturbed. In the United States police officers have frequently gone on board vessels of foreign nations in harbor and arrested persons accused of crimes under our laws, for whose arrest proper warrants were issued. A case of this kind, with which you perhaps are familiar, was decided by a Philadelphia court about a year ago, which arose from the arrest of the master of an Austrian vessel."

Mr. Frelinghuysen, Sec. of State, to Mr. Randall, Mar. 14, 1884. MSS. Dom. Let.

"It may be safely affirmed that when a merchant vessel of one country visits the ports of another for the purposes of trade, it owes temporary allegiance and is amenable to the jurisdiction of that country, and is subject to the laws which govern the port it visits so long as it remains, unless it is otherwise provided by treaty.

"Any exemption or immunity from local jurisdiction must be derived from the consent of that country."

Mr. Bayard, Sec. of State, to Mr. Hall, March 12, 1885. MSS. Inst. Cent. Am. For. Rel., 1885.

"Generally speaking, the consul in Hayti has jurisdiction of all disputes on ship board, not affecting the peace of the port, but as this right is not specially conceded by treaty it could only be claimed and exercised by comity, and in the absence of any competent claim of jurisdiction by the local courts, unless indeed the right may spring from Art. XXXIII of said treaty, the most-favored-nation clause."

Mr. Bayard, Sec. of State, to Mr. Thompson, July 31, 1885. MSS. Inst., Hayti. See as to jurisdiction in Japan, *infra*, § 125.

The local port authority has jurisdiction of acts committed on board of a foreign merchant ship while in port, provided those acts affect the peace of the port, but not otherwise; and its jurisdiction does not extend to acts internal to the ship, or occurring on the high seas.

The local authority has right to enter on board a foreign merchantman in port for the purpose of inquiry universally, but for the purpose of arrest only in matters within its ascertained jurisdiction.

8 Op., 73, Cushing, 1856.

(For an account of the cases of the Newton and the Sally, involving the question of the jurisdiction of United States consuls over crimes committed on board United States vessels in French ports, see 1 Phillimore Int. Law (3 ed.), 484.) See, further, App., Vol. III, § 35.

The circuit courts of the United States have not jurisdiction, under the crimes act of the 30th of April, 1790, of a manslaughter committed on an American vessel in a river within the jurisdiction of a foreign sovereign.

U. S. *v.* Wiltberger, 5 Wheaton, 76.

But see Thomas *v.* Lane, 2 Sumn., 1, and U. S. *v.* Coombs, 12 Pet., 72, cited *infra*.

It was held by the English judges, on a case reserved in 1868, that "The admiralty jurisdiction of England extended over British vessels not only when they are sailing on the high seas, but also when they are in the rivers of a foreign territory at a place below bridges, where the tide ebbs and flows, and where great ships go. It was also held that all seamen, whatever their nationality, serving on board British vessels, are amenable to the provisions of British law."

R. *v.* Anderson, L. R., 1 C. C. R., 161.

"It is clear," said Bovill, C. J., in the course of his opinion, citing Ortolan, "that with regard to merchant vessels of foreign countries,

the French nation do not assert their police law against the crews of those vessels unless the aid of the French authority be invoked by those on board, or unless the offense committed leads to some disturbance in their ports." "As far as America is concerned" (the defendant was an American citizen), "she has by statutes made regulations for those on board her vessels in foreign ports, and we have adopted the same course in this country. When vessels go into a foreign port they must respect the laws of that nation to which the port belongs, but they must also respect the laws of the nation to which the vessel belongs." To sustain the position that in such cases the admiralty has jurisdiction were cited: Thomas *v.* Lane, 2 Sumner, 1, and U. S. *v.* Coombs, 12 Pet., 72, which cases, it was maintained, overruled U. S. *v.* Wiltberger, 5 Wheat., 76.

In R. *v.* Keyn, L. R., 2 Ex. D, 23; 13 Cox, 403, a case growing out of the Franconia disaster, it was ruled in England, that the court of criminal appeal has no jurisdiction to try a foreigner, who, in a foreign ship, is chargeable with a negligent collision, producing death in the colliding English ship, though the collision was within three miles of the English coast. The vote of the court, however, on this point was seven to six: Aff., Cockburn, C. J., Kelly, C. B., Bramwell, J. A., Lush, J., Pollock, B., Field, J., and Sir R. Phillimore; diss., Lord Coleridge, C. J., Brett, J., Amphlett, J. A., Grove, Denman, and Lindley, JJ.

This case, with the subsequent legislation, is discussed in 1 Crim. Law Mag., 701, *ff.*

The points taken by Cockburn, C. J., in which a majority of the judges agreed, were as follows:

"'The extent of the realm of England is a question, not of international but of English law.

"'There is no evidence that the sovereigns of this country ever either claimed or exercised any special jurisdiction over a belt of sea adjacent to the coast, though there is evidence that the admiral has always claimed jurisdiction over persons on board of British ships, wherever they might be, and that he formally claimed jurisdiction over all persons and all ships in the four narrow seas. This claim, however, has long since been given up and no other claim has ever been substituted for it.

"'Hence there is no evidence that any British court has jurisdiction over a crime committed by a foreigner on board a foreign ship on the high sea, but within three miles of the coast.'"

2 Steph. Hist. Cr. Law, 31; 1 Whart. Cr. Law (9 ed.), § 269.

In R. *v.* Keyn, above cited, it was said by Sir R. Phillimore that "the *consensus* of civilized nations has recognized a maritime extension of frontier to the distance of three miles from low-water mark, because such a frontier or belt of water is necessary for the defense and security of the adjacent state." By Lindley, J., it was said that "it is conceded that even in time of peace the territoriality of a foreign merchant-ship, within three miles of the coast of any state, does not exempt that ship or its crew from the operation of those laws of that state which relate to its revenue or fisheries." In this doctrine the judges generally concurred, though it was held, by a majority of seven to six, that the jurisdiction, without some legislative action, could not be exercised for the purposes of criminal prosecution over foreigners within such limits. In 1878 was passed the act of Parliament giving such jurisdiction. [Quoted *supra*, § 32.]

See Whart. Conf. of Laws, § 818.

XIII. *NOT SO AS TO PUBLIC SHIPS.*

§ 36.

As to reception in neutral ports of belligerent cruisers, see *infra*, § 394.
As to permitting such cruisers to arm and proceed to sea, see *infra*, §§ 393, 396, 399.

A ship-of-war, when in a foreign friendly port, is ordinarily exempt from the jurisdiction of such port.

Mr. Randolph, Sec. of State, to Mr. Hammond, July 23, 1794. MSS. Notes, For. Leg.
Mr. Frelinghuysen, Sec. of State, to Mr. Romero, May 25, 1882. MSS. Notes, Mex.

But the officers of a vessel-of-war belonging to a friendly foreign nation cannot set up extraterritorality when unofficially on shore in a port in whose harbor their vessel is temporarily moored.

Mr. Randolph, Sec. of State, to Mr. Hammond, July 23, 1794. MSS. For. Leg. Notes.

"The President highly disapproves that a public vessel-of-war, belonging to a foreign nation, should be searched by officers of the customs upon a suspicion of illicit commerce. The propriety of representing such a suspicion to the consul of that nation, or the commander of the vessel, will not be controverted, this being a course respectful and customary. A general instruction will be therefore given to pursue this course, with the view that if it should be ineffectual the Government of the United States may adopt those measures which the necessity of the case and their rights may require."

Mr. Randolph, Sec. of State, to Mr. Fauchet, Nov. 17, 1794, cited in letter of same to same, June 13, 1795. MSS. Notes, For. Leg.

A foreign ship-of-war admitted by courtesy into a port held by military occupation, in time of war, by forces of the United States, is subject, so far as concerns the right to carry off persons from such port, to the military orders governing the port.

Mr. Seward, Sec. of State, to Mr. Tassara, July 2, 1863. MSS. Notes, Spain; Dip. Corr., 1863.

"Having submitted the question thus raised to the President of the United States, I have now to express to you my regret at the conclusion at which the Spanish Government has arrived. It seems to me, in effect, to set up, although unconsciously, a claim that a Spanish ship-of-war, admitted by courtesy into a place actually held in military occupation by the forces of this Government, may disregard existing military orders, which are issued with a view to the military situation of that place. This seems, in effect, nothing less than a claim of Spanish sovereignty over American citizens on board a Spanish ship, not merely within the civil jurisdiction, but even within the military lines

of the United States in their own territories. The claim thus understood cannot be conceded. I am, therefore, to inform you that the Government adheres to its former declaration that no ship-of-war, of whatever nation, will be expected to carry into or out from any port of the United States, which is either occupied by their forces or is in possession of the insurgents, any person who does not actually belong to the civil, military, or naval service of the country whose flag that vessel carries, and especially that such ships-of-war shall not, without express leave of the military authorities, carry into or out of such ports any citizen of the United States. It can be only on an expected compliance with these terms that any foreign ship-of-war can enter ports of the classes I have designated during the continuance of the present civil war."

Ibid.

If there be no prohibition, the ports of a friendly nation are considered as open to the public ships of all powers with whom it is at peace; and those vessels are supposed to enter such ports and remain in them under the protection of the Government of the place. Whether the public ships-of-war of one nation enter the ports of another friendly nation under the license implied by the absence of any prohibition, or under an express stipulation by treaty, they are equally exempt from the local jurisdiction.

The Exchange *v.* McFaddon, 7 Cranch, 116, 145. (See The Pizarro *v.* Matthias, 10 N. Y. Leg. Ob., 97.)

The exemption of foreign public ships from the jurisdiction of the courts of the United States is not founded upon any notion that a foreign sovereign has an absolute right, in virtue of his sovereignty, to an exemption of his property from the local jurisdiction of another sovereign when it comes within his territory. It stands upon principles of public comity and convenience, and arises from the presumed consent or license of nations, that foreign public ships coming into their ports and demeaning themselves according to law and in a friendly manner shall be exempt from the local jurisdiction. But as such consent and license is implied only from the general usage of nations, it may be withdrawn upon notice at any time without just offense, and, if afterwards, such public ships come into our ports they are amenable to our laws in the same manner as other vessels.

The Santissima Trinidad, 7 Wheaton, 283; aff'd., 1 Brock., 478.

Whatever may be the exemption of a public ship herself, and of her armament and munitions of war, from the jurisdiction of the courts of the United States, any prize property which she brings into our ports is liable to such jurisdiction for the purpose of examination and inquiry, and, if a proper case is made out, for restitution. And if goods are landed from the public ship in our ports, by the express permission of our Government, this does not vary the case, since such permit in-

volves no pledge that, if illegally captured, the goods shall be exempted from the ordinary operation of the laws of the United States.

The Santissima Trinidad, 7 Wheat., 283, 352.

The cases of the Cassius, 3 Dallas, 121, and the Invincible, 1 Wheaton, 238, decide that neither a public vessel of another nation, nor its officers, are liable to answer in our courts for a capture on the high seas, but do not touch the question of jurisdiction over her prizes lying in our ports, which extends to libels *in rem* for restitution of such prizes made in violation of our neutrality.

The Santissima Trinidad, 7 Wheat., 283.

A writ of *habeas corpus* may be awarded to bring up an American subject unlawfully detained on board a foreign ship-of-war, the commander being amenable to the usual jurisdiction of the state where he happens to be, and not entitled to claim the extraterritoriality which is annexed to a foreign minister and to his domicil.

1 Op., 47, Bradford, 1794.

Criminal and civil process may be served under treaty upon a person on board a British man-of-war lying within our territory.

1 Op. 87, Lee, 1799.

Foreign armed vessels, adopting the character of merchant ships by carrying merchandise, render themselves subject to the revenue laws.

1 Op., 337, Wirt, 1820.

A foreign (British) ship-of-war, or any prize of hers in command of a public officer, possesses, in the ports of the United States, the rights of extraterritoriality, and is not subject to the local jurisdiction.

7 Op., 122, Cushing, 1855.

Hence a prisoner of war on board such a foreign ship-of-war, or of her prize, cannot be released by *habeas corpus* issuing from courts of the United States or of a particular State. "So long as they (the prisoners) remained on board that ship they were in the territory and jurisdiction of their sovereign. There the neutral has no right to meddle with them."

But if such prisoner of war be taken on shore, he becomes subject to the local jurisdiction, or not, according as it may be agreed between the political authorities of the belligerent and neutral power.

Ib.

[Mr. Cushing does not notice in the above case the opinions of Mr. Bradford and Mr. Lee in 1 Op., 47, 87, above cited. It is to be observed that Mr. Lee bases his opinion on the twenty-third article of the treaty of London, "that the ships-of-war of each of the contracting parties shall at all times be hospitably received in the ports of the other; *their officers and crews paying due respect* to the laws and Government of the country.]

Ships-of-war enjoy the full rights of extraterritoriality in foreign ports and territorial waters.

8 Op., 73, Cushing, 1856.

As to reciprocity in allowing foreign ships-of-war in United States ports to receive goods free of duty, see Mr. Cadwalader, Asst. Sec. of State, to Mr. Washburn, Oct. 14, 1876. MSS. Inst., France.

As to hospitalities to ships of war, see Brit. and For. St. Papers, 1865–6, vol. 56.

The sovereignty of the flag of foreign ships-of-war is not only conceded in England, where the rule in respect to merchant ships is sometimes contested, but it is held to apply to port as well as at sea. The rule, says Judge Story, in an opinion adopted by Sir R. Phillimore (I, 477), is not founded on any notion that a foreign sovereign has an absolute right, in virtue of his sovereignty, to an exemption of his property from the local jurisdiction of another sovereign when it comes within his territory, for that would be to give a sovereign power beyond the limits of his own empire. But it stands upon principles of public comity and convenience, and arises from the presumed consent or license of nations, that foreign public ships coming into home ports and demeaning themselves according to law, and in a friendly manner, shall be exempt from the local jurisdiction. "But as such consent and license are implied only from the general usage of nations they may be withdrawn upon notice at any time without just offense; and if afterwards such public ships come into our ports, they are amenable to our laws in the same manner as are other vessels." But, unless withdrawn, it is presumed to be conceded. And it is now settled that foreign ships-of-war and boats, the particular property of a foreign sovereign, are not liable to process, though the ships or boats be at the time of the cause of action on the territorial waters of the state of process (Santissima Trinidad, *ut sup.*). A state, it should be added, is internationally entitled to exclude from its ports the ships-of-war of other nations or to limit their stay; and this right has been exercised by neutral states as to belligerent cruisers. When such a foreign ship enters a friendly port, it is exempted ordinarily from the control of the port police. If there be misconduct on board such ship when in port it may be required to leave the port without breach of international courtesy.

See authorities cited in Whart. Com. Am. Law, § 190; Twiss, i, § 158; Bluntschli, § 321.

As to asylum given to belligerent ships, see *infra*, § 394.

As to refusing admission into territorial waters of foreign public ships, see *infra* §§ 315*b*, 331.

In the preamble of the judgment of 1872 by the Geneva Tribunal is the following:

"And whereas the privilege of extraterritoriality accorded to vessels of war has been admitted into the law of nations, not as an absolute right, but solely as a proceeding founded on the principle of courtesy and mutual deference between different nations, and therefore can never be appealed to for the protection of acts done in violation of neutrality:"

4 Papers relating to Treaty of Washington. (See, as to award, *infra*, § 402*a*.)

"The tribunal of arbitration at Geneva held that 'the privilege of extraterritoriality, accorded to vessels of war, had been admitted into the

law of nations, not as an absolute right, but solely as a proceeding founded on the principle of courtesy and mutual deference between different nations.' This is in accordance with the settled practice of the United States. Attorney-General Lee, in the early days of the Republic, gave his opinion that it is lawful to serve either civil or criminal process upon a person on board a British man-of-war lying within our territory."

Mr. J. C. B. Davis. Notes, &c.

But this pretension was resisted and resented by the United States when the Chesapeake was "visited" and searched by the Leopard in 1809 (see *infra*, §§ 315*b*, 331), and was withdrawn by the British Government.

See criticism in Creasy's Int. Law, 177, *ff*.

In the Constitution (40 L. T., N. S., 210) it appeared that the Constitution, a United States vessel of war, while on a voyage from Havre to New York, having on board, among other things, goods from the Paris Exposition, ran ashore on the Welsh coast, when salvage services were rendered to her. Sir R. Phillimore refused to allow a warrant to issue for her arrest, or for the arrest of the goods on board of her, at the salvor's suit. The claim was settled by voluntary payment by the United States, who resisted the issue of the warrant on ground of principle. 'It is clear,' said Sir R. Phillimore, 'upon all the authorities which are to be found in the case of the Charkeih (L. R., 4 Ad. & E., 39), that there is no doubt as to the general proposition that ships-of-war belonging to another nation with whom this Government is at peace are exempt from the civil jurisdiction of the country.' And it was further held that an unarmed vessel belonging to a foreign sovereign, employed by him on a national service, is not subject to arrest."

The Parlement Belge, L. R., 5 P. D., 97, citing also Briggs *v.* Light-Boats, 11 Allen, 157. (See, also, The Pizarro, 10 N. Y. Leg. Ob., 97.)

XIV. *OPPRESSIVE PORT EXACTIONS.*

§ 37.

"You will state that this Government does not question the right of every nation to prescribe the conditions on which the vessels of other nations may be admitted into her ports. That, nevertheless, those conditions ought not to conflict with the received usages which regulate the commercial intercourse between civilized nations. That those usages are well known and long established, and no nation can disregard them without giving just cause of complaint to all other nations whose interests would be affected by their violation.

"That the circumstance of an officer of a vessel having published, in his own country, matters offensive to a foreign Government does not, according to those usages, furnish a sufficient cause for excluding such vessel from the ports of the latter * * *

"That the steamers employed in transporting the mail from this country to Havana, being in the employment of Government, and placed by

law, to a certain extent, under its control, partake, in some degree, of the character of public vessels."

Mr. Conrad, Acting Sec. of State, to Mr. Barringer, Oct. 28, 1852. MSS. Inst., Spain.

"It has become necessary again to instruct you to call the attention of the Spanish Government to the onerous burdens to which the trade of the United States is subjected by reason of the system of fines imposed by the customs authorities of Cuba.

"The able manner in which you have already presented the subject in your notes of the 16th July, 1870, and 28th of November, 1872, makes it unnecessary for me to repeat or to dwell upon the facts of which our ship-owners and masters complain. The printed memorandum which is inclosed shows the present condition of the question. The remedy which the ship-owners of the United States desire cannot be better stated than in the language of the following extract from the memorial which forms part of the inclosed memorandum:

"The Spanish laws require that a vessel bound for Cuban ports shall make out manifests of cargo, the same to be certified by the Spanish consul residing at, or nearest to, the port of loading, in which manifest the captain must declare positively, and without qualification, the several and different kinds of packages, their marks, the generic class of contents, as well as the weights and values of same, and for every instance where, on arrival in Cuba, the examination of the cargo shows a difference between the packages and the weights, and contents of same as actually found and the same as manifested, the vessel is fined, while the goods escape all responsibility.

"That although the *generic* class of the goods is stated on the manifest, in compliance with the requirements of the Spanish laws, and said manifests accepted and certified to by the Spanish consul, yet the vessel is fined for not stating the *specific* class.

"That we are entirely dependent on shippers of cargoes for information as to weights, values, and contents of packages shipped from which to make out manifests, and irresponsible parties often give erroneous descriptions of their part of cargo, resulting in fines imposed on the vessels, at times greatly in excess of the freight, against which we have no redress.

"That the customs authorities at the several ports in Cuba place different constructions on the laws relative to vessels, and the manifests of same, and fines have been imposed in one port for stating that for which fines were imposed in another port for omitting.

"That the captain is only informed of any fines imposed on his vessel when he attempts to clear her at the custom-house, whereby he has either to pay the fines or detain the vessel indefinitely while contesting the same.

"That although we are willing and endeavor to comply with the said laws regulating manifests, yet, under the conflicting instructions

placed on same by the different collectors of customs in Cuba, we find it impossible to do so, or to avoid fines.

"In cases where fines are imposed, an appeal to the superior authorities at Havana is permitted on payment, under protest, of said fines; but unless the amount of such fine is excessive the delay occasioned by the detention of the vessel would exceed in most cases the amount of such fine even if recovered.

"We would respectfully represent to the Department that as the vessel, through her agents, is entirely dependent on the shippers of cargo for information necessary to describe on the manifest the contents and weights of packages shipped, the propriety of imposing fines on the *goods* erroneously described on manifest, instead of on the *vessel*, as then the shipper would have a sure remedy against the vessel in case of error on her part, or on the part of her agents, in making out manifests, while under existing regulations it is in most cases almost, if not impossible, for the vessel to recover the amount of fines from the shipper.

"These objections and suggestions appear to be reasonable, moderate, and just. It has therefore been determined both to instruct you to use your best endeavors to secure the modifications and changes which the ship-owners desire, and also to endeavor to secure a similar and, as far as possible, identical action on the part of the British, German, and Swedish and Norwegian Governments, whose commerce also is affected by these rules and regulations.

"You will therefore confer with the British, German, and Swedish and Norwegian ministers at Madrid, in the hope that they may receive instructions which may enable each to frame a note to be addressed by each separately to the Spanish minister for foreign affairs on the subject, which may be simultaneous, if not identical. Should they or either of them, under instructions from their Governments, decline to act, you will nevertheless address a note yourself upon the subject, and spare no reasonable efforts to induce the Spanish Government to accede to the requests you are instructed to make."

Mr. Fish, Sec. of State, to Mr. Sickles, March 21, 1873. MSS. Inst., Spain; For. Rel., 1873. Accompanying this instruction are several valuable documents relative to the questions discussed.

"The undersigned, Secretary of State of the United States, has the honor to acknowledge the receipt of the note of Mr. Preston, envoy extraordinary and minister plenipotentiary of Hayti, of the 16th instant.

"It states that his Government has thought proper to transfer to its legation in this country the discussion which has heretofore been carried on with the legation of the United States at Port au Prince, relative to the act of the Haytian Congress of the 23d of August, 1877, authorizing certain charges by the consuls of that Republic abroad on exports

tions from foreign countries to Hayti. With a view to show that those charges are not incompatible with the treaty between the United States and that Republic, Mr. Preston quotes several articles of that instrument. These, however, are general in their terms and appear to have no special reference to the question at issue.

"According to the preamble, one of the main objects of the treaty was to place the commercial relations between the two countries upon the most liberal basis.

"The act of the Haytian legislature referred to cannot be regarded as in conformity with that stipulation. It authorizes the consuls of that Republic to charge exorbitant fees on exportations from the United States; among others, 1 per cent. on the value of cargo of the vessel. This, besides being illiberal in its character, is tantamount to an export duty, acquiescence in which by this Government would be a concession to that of Hayti of an authority in ports of the United States which has not been conferred on this Government by the Constitution.

"There is, however, a clause in the thirteenth article of the treaty, one of those cited by Mr. Preston, which seems to have a direct application to the point in dispute.

"If the Haytian consular charges in the United States are so considerable as virtually to be an export tax, this would in effect contravene the stipulation which declares that no higher duties or charges shall be imposed in the United States on the exportation of any article to Hayti than such as shall be payable on the exportation of the like article to any foreign country. This clause is unconditional, and not only forbids this Government from levying any such tax, but also a consul of Hayti at a port of the United States.

"The preamble to the Haytian law in question expressly acknowledges that one of its objects was to benefit the treasury of that Republic. Several of the other charges which it authorizes appear to be excessive. Such charges may not be uniform as prescribed by the laws of different countries. It is believed, however, that no other than Hayti has authorized them to such an extravagant amount as that provided for by the law referred to, or has required an export tax on merchandise. This Department had hoped that the remonstrances on the subject which had been addressed to that Government through the United States legation in Hayti would ere this have led to a repeal or modification of that statute. This hope has, however, been disappointed, but as the charges complained of are believed to work a serious discouragement to trade, it is hoped that, as the Haytian Government is understood to be adverse to a policy leading to such a result, it will no longer delay removing the cause of the grievance.

"It is believed that Mr. Preston is mistaken in saying that the United States is the only Government which has complained of the effect of the statute referred to. According to reports from the legation of this

country in Hayti, representatives of other Governments have also pointedly complained to the same effect."

Mr. Evarts, Sec. of State, to Mr. Preston, Jan. 22, 1879; MSS. Notes Hayti; For Rel., 1879. (See same to same, April 19, 1879, *id.*; June 13, 1879, *id.*)

"Referring to your note of the 9th of May last, and my acknowledgment thereof on the 13th of the same month, in relation to the Haytian tariff of consular fees under the decree of August 23, 1877, and to the protests of the representatives at Port au Prince of the United States, Great Britain, Germany, and France, and the reply of the Haytian Government thereto, I have now the honor to communicate to you, in conformity with the desire expressed by the Marquis of Salisbury the views of this Government in relation to that questien.

"The Government of Hayti, prior to the reply of the 6th of March last to the foreign representatives named, had seen fit on the 4th of February to transfer the discussion of the question to Washington, so far as this Government was concerned, by a very full and argumentative note, addressed to me by Mr. Stephen Preston, the Haytian minister in this country. Although much more extended, the note of Mr. Preston in the main merely repeats and reaffirms the reasoning and conclusions of the communications made to the foreign representatives by M. Ethéart, and, like those, they appeared to this Government, as well as to that of Her Majesty, as appears from your note, to be altogether unsatisfactory, and reply was so made to Mr. Preston on the 13th ultimo. In that reply the Haytian minister was informed, with respect to that portion of his note which related to the authentication by the consular officers of Hayti in this country of the invoices of the cargoes of vessels bound to the ports of that country, that the charge of 1 per cent. on values for that proceeding is, after the most deliberate consideration, believed to be unduly exorbitant, and tantamount to an export tax, which it does not comport with the dignity of this Government to allow to be exacted by any foreign authority within the jurisdiction of the United States. It was asserted that, even if the exaction in the form in which it is imposed were moderate and unobjectionable as to amount, still, if it were once acquiesced in this would be a bar to any objection which this Government might make if the consular fee were afterward to be much augmented. The inexpediency of subjecting exports from this country to Hayti to a tax of the kind was further illustrated by the consideration that, owing to the dangers of the sea and other causes, many cargoes do not reach their destination.

"The Government of the United States, being by its Constitution expressly prohibited from levying an export tax, it cannot allow any foreign power to exercise here, in substance or in form, a right of sovereignty denied to itself. No denial was made of the right of the Haytian Government, at its discretion, so far as this may not have been limited by treaty, to impose duties on the cargoes of vessels from this coun-

try arriving in Haytian ports, but it was complained most positively that the present grievance of a consular fee of this character exacted in our ports is, in its form, derogatory to the sovereignty of the United States, and that this character was not removed from it by the Haytian citation of the axioms of political economy that all duties are ultimately paid by the consumer. In view of all this, it was hoped that the Haytian Government would see the expediency of changing its regulations upon that subject without any unnecessary delay."

Mr. Evarts, Sec. of State, to Sir E. Thornton, July 14, 1879. MSS. Notes. Gr. Brit.; For. Rel., 1879.

"In Mr. Blaine's instruction to you of the 23d of November last concerning the long pending and still unsettled claim of the owners of the bark Masonic, some general observations were submitted in regard to the arbitrary and unjust surveillance exercised towards American merchant vessels in Spanish colonial ports. These suggestions of my predecessors were made in the mutual interest of American and Spanish commerce, and in promotion of the friendly relations which have so long subsisted between the two nations. Since that instruction was forwarded three other cases of less pecuniary magnitude, but of scarcely less hardship, have been brought to the attention of the Department. In regard to each of these, instructions have also been forwarded to your legation, but as pertinent to the subject of this instruction it seems proper to advert briefly to the facts upon which they rest.

"The American brig George W. Chase was fined $50 in November last by the customs authorities at Sagua, the sole ground for the fine being an omission of certain words in a manifest. The clause of the document being "900 bundles of hoops 40 feet long [40 hoops in each bundle]," the words inclosed in brackets were inadvertently omitted by the Spanish consul at Philadelphia, who transcribed the document; and although the officer in question certified as to the mistake, the imposition of the fine was nevertheless adhered to. The second case [brought to attention by No. 1090 of Vice-Consul-General Williams] is that of the steamer Ellie Knight, which entered the port of Havana with a cargo of cattle from Mobile and Key West, on the 27th December last, having on board 60,000 feet of lumber destined for Key West, but which was kept on board as ballast while crossing the Gulf. As a cattle-carrying boat the steamer was chargeable, under the Spanish laws and revenue regulations governing the ports of Cuba, to a tonnage duty of 5 cents per ton, which would have made the charge $14.90, but, instead of this, the customs officers, on account of the 60,000 feet of lumber, assessed a duty of $1.30 per ton, making the amount on the vessel's tonnage $387.40, an excess of $372.50.

"Still another and more recent case was that of the steamer Santiago, of New York, a vessel regularly engaged in the trade between New York and the ports of Santiago de Cuba and Cienfuegos, on the south

side of the island of Cuba. Under circumstances of great apparent hardship, a fine of $1,900 was imposed on the vessel, and the master, Captain Phillips, was obliged to execute a bond, with sureties for the amount, in order to secure a clearance for his vessel.

"In each of these cases instructions have been forwarded to you, and they are adverted to here only as being pertinent to the general subject of this instruction.

"They are examples of many similar occurrences to American vessels in the colonial ports of Spain. Hitherto the consul-general of the United States at Havana has been able to secure an adjustment of such cases by prosecuting the complaints to the superior authorities at that port, and efforts looking towards the same end were made by that officer in each of the cases referred to. He was met, however, with the announcement that under an existing ordinance, the strict observance of which has been re-enjoined by a royal order recently promulgated in Cuba, the local authorities can no longer deal with such questions, but that they must be remitted for settlement to the Government at Madrid. The adoption of this course of procedure by Spain has very much aggravated this general grievance to American commerce. Complaints of such instances have of late become so frequent from owners and masters of American vessels that the question demands the most serious attention of this Government. The President therefore directs me to instruct you to bring the question to the attention of His Catholic Majesty's Government, and in doing so you will request that authority shall be given, either to the captain-general in Cuba or to His Majesty's minister at this capital, to consider such cases and grant redress when necessary. The arbitrary conduct of subordinate officials in Cuba cannot be submitted to without retaliation on Spanish vessels and commerce, unless there is secured a more speedy remedy than is afforded by resort to Madrid."

Mr. Frelinghuysen, Sec. of State, to Mr. Hamlin, Feb. 15, 1882. MSS. Inst., Spain; For. Rel., 1882.

"Mr. James McKay, a citizen of the United States resident in Monroe County, Florida, and who is extensively engaged in feeding and shipping cattle to Cuban markets, has recently brought to the attention of the Department a practice pursued by the Spanish consul at Key West, in regard to shipments from that port to Havana and other Cuban ports, which results in annoyance, inconvenience, and serious losses to himself and other American citizens engaged in similar business.

"It appears from Mr. McKay's letter of the 22d of June last to the Department, that the Spanish consul at Key West, in pursuance, as that officer alleges, of instructions from his Government, exacts and collects from Mr. McKay and other American cattle shippers 40 cents a head on all cattle shipped by them from the State of Florida to Cuba. This is in addition to the ordinary and usual consular fees charged and

collected for clearing the vessel, certifying papers, and such other charges as may properly be made by the consul in connection with such shipments. On these same cattle, when landed on the island of Cuba, Mr. McKay and the other shippers situated like him have to pay an import duty of $6 per head. Of this import duty paid in Cuba, however onerous it may be, they make no complaint, recognizing the right of the Spanish Government to impose and collect within its own territorial jurisdiction such duties as it may deem proper under its own municipal laws, provided it does not transcend the limits of treaty stipulations.

"In the letter referred to, Mr. McKay transmits thirteen protests made by him, before a notary public, in relation to as many shipments, giving in each case the name of the vessel, the number of cattle in the cargo, the date of shipment, and the gross amount of head-tax charged on each shipment. Thus, on the 22d of April, 1882, on the steamship Alabama, from Key West to Havana, 451 head of cattle, upon which he paid to the consul in question $180.40, and so on through all the others, varying only in the number of cattle in each cargo and the gross amount of tax paid. A subsequent letter from McKay on the 19th ultimo incloses ten similar documents. These twenty-three protests represent as many shipments made by him from Key West to Havana between the 22d of April and the 7th of August of the present year, and embracing 10,967 head of cattle, upon which Mr. McKay has paid to the Spanish consul at Key West, at 40 cents a head, $4,386.80, and when the $6 a head paid upon their being landed at Havana ($65,802) is added, it is seen that this one American shipper has been obliged to pay to the Spanish Government the sum of $70,188.80 before he gets his cattle into the Cuban market.

"It is not conceivable that the Government of Spain, a country whose history and traditions are so intimately and so justly identified with the growth and progress of the world's commerce, could intend this charge of 40 cents a head as a restriction on the commerce of the United States. The long and unbroken friendship existing between the two countries forbid such an interpretation of the policy of His Catholic Majesty's Government.

"The charge, nevertheless, under whatever supposed right or necessity on the part of Spain it may be imposed, is in effect such a restriction, and is a burden so onerous on American citizens engaged in that rapidly increasing branch of American commerce as must in time have the effect of excluding them from the Spanish colonial markets of Cuba. It is a charge, moreover, upon whatever ground it may be placed, that is in itself anomalous. No other Government with which the United States hold commercial relations attempts to make or enforce any similar tax or charge in the ports of the United States, and it is almost superfluous to state that the consular officers of the United States are not authorized to make any similar charges in the ports of Spain or her

transatlantic colonies on any goods, the produce of those countries, destined for ports of the United States. The remedy for this evil is with the Spanish Government. It may in its hands be made simple, adequate, and immediate by putting an end to the practice, and in the present case reimbursing to Mr. McKay the amount he has already paid, which, as shown at present, is $4,386.80.

"The alternative left to this Government in case that of Spain shall fail to give the subject prompt and just consideration, is one that is not contempleted with satisfaction; that is, a similar charge on colonial product of Spain shipped by Spanish subjects from the ports of their own country to the United States. A simple statement of the present status of the commerce between the United States and these colonies is sufficient to show how detrimental such a measure would be to the commercial interests of the colonial subjects of His Catholic Majesty.

"In 1880 the imports of the United States were, from Cuba, $65,423,000; all other Spanish colonial ports, $12,214,000. Exports from United States to these same places in that year—Cuba, $11,000,000; to all other colonial ports, $2,000,000. For 1881, exports from Cuba, $63,000,000; from all other Spanish colonial ports, $12,000,000. Exports from the United States to Cuba, $11,000,000."

Mr. J. Davis, Acting Sec. of State, to Mr. Hamlin, Sept. 4, 1882. MSS. Inst., Spain; For. Rel., 1882.

"Your dispatch No. 52, of the 6th of June last was duly received, though it does not appear to have been hitherto acknowledged. It is accompanied by a copy of the note of the minister for foreign affairs to you of the 29th of May, in which he seeks to justify the tax. The Department concurs in the view of the matter taken in your dispatch. That the application of the tax to vessels clearing to colonial ports was a mere extension of a tax, exacted since 1874, to vessels clearing for ports in the peninsula, seems to be an invasion of the point at issue. Our complaint is that as our commercial intercourse with Spain is mainly with her possessions in this hemisphere, exorbitant consular charges on United States vessels and their cargoes bound to such ports are virtually an export tax, which assuredly no foreign Government can be allowed to exact in our ports, especially as such a power has not been granted to this Government. If, however, as the minister says, it will be necessary for the legislature of Spain to correct the evil of which we complain, it is hoped that the executive Government of that country will exert all proper influence towards having the desired change effected. This is a measure which may be deemed necessary, not only for improving commercial intercourse between the two countries, but also for strengthening the good feeling between them. It can never be expected that the people of this country will acquiesce in the levy here by the agents of a foreign Government of any charges which, in their amount or character, may be tantamount to an export tax.

"A controversy on a similar subject took place a few years since between this Government and that of Hayti. A copy of the two principal instructions in regard to the subject from Mr. Evarts to the minister of the United States in that country is transmitted for your information.

"The Haytian Government ultimately repealed the obnoxious tax."

Mr. Frelinghuysen, Sec. of State, to Mr. Hamlin, Sept. 22, 1882. MSS. Inst., Spain; For. Rel., 1882.

"Mr. Hamlin's No. 100, of the 12th ultimo, has been received. His course in presenting our complaint against the consular fee of 40 cents per head on cattle shipped from our ports to the Antilles (as set forth in Mr. Davis's No. 94) as resting on the same basis as the previous complaint concerning the exaction of a consular fee of 10 cents per ton on invoiced cargo, conforms to the intention of the Department; and his note of 26th of September to the Marquis de la Vega is approved as a forcible, and, it is hoped, conclusive exposition of our case.

"The two classes of charge are of the same nature, and are opposed by us as being a revenue charge levied in our ports, not for services rendered by the consul or proportionate to such services, but as in effect an export tax. It cannot adequately be met by saying (as has been said in past discussion) that our consular fees for authenticating invoices may, when these are numerous, amount to a heavy charge, exceeding that in the case of a single moderate cargo when comprised in one invoice and assessed at 10 cents a ton. The service performed by the consul is one required by law for the protection of the revenue at the port of entry, and involves ascertainment of the bona fides and responsibility of the exporter, and the substantial accuracy of the statements contained in the invoice and sworn declaration therewith. This service is uniform in all cases, and neither the consul's labor nor his responsibility are measurable by the weight of the merchandise invoiced or the number of pieces of which it is composed. It would apparently be as tenable for Spanish legislation to assess an ad valorem tax for the verification of an invoice. No basis of consular fees which depends on the weight, size, amount, or value of the merchandise, and disregards the specific clerical or administrative act done, can be in principle anything short of an export tax levied in the jurisdiction of another state."

Mr. Frelinghuysen, Sec. of State, to Mr. Reed, Nov. 10, 1882. MSS. Inst., Spain; For. Rel., 1882.

"I have alluded in my previous messages to the injurious and vexatious restrictions suffered by our trade in the Spanish West Indies. Brazil, whose natural outlet for its great national staple, coffee, is in and through the United States, imposes a heavy export duty upon that product. Our petroleum exports are hampered in Turkey and in other

Eastern ports by restrictions as to storage and by onerous taxation. For these mischiefs adequate relief is not always afforded by reciprocity treaties like that with Hawaii or that lately negotiated with Mexico and now awaiting the action of the Senate. Is it not advisable to provide some measure of equitable retaliation in our relations with Governments which discriminate against our own? If, for example, the Executive were empowered to apply to Spanish vessels and cargoes from Cuba and Puerto Rico the same rules of treatment and scale of penalties for technical faults which are applied to our vessels and cargoes in the Antilles, a resort to that course might not be barren of good results."

President Arthur, third annual message, 1883.

"You have yourself already made known to the President several very convincing reasons why the practice in Venezuela of demanding that the custody of ships' papers while in port be confided to the Venezuelan officers is not in consonance with the practice of nations or with commercial interests. Your grounds were good, as far as they went, but the principles underlying the question are broader, and involve the doctrine of reciprocity under treaty and international maritime laws.

"In the first place, it is proper that the President should be disabused of any impression he may have formed that the matter is brought up as an innovation. It has for more than fifty years been the occasion of discussion and remonstrance with various nations of Spanish America; and if it be now revived in connection with Venezuela, it is because it seems necessary to the best interests of both countries that an anomalous practice should not exist between them in this respect.

"The discussion with Colombia is in point. In 1876 a general movement of the foreign representatives at Bogota was made to secure the abrogation of a law which required the delivery of the papers of foreign vessels to the local port officers. An arrangement then concluded diplomatically set the matter at rest by recognizing the right of the consul of the ship's nationality to have the custody of the ships' papers of their national vessels, and the law has since been repealed.

"I transmit, herewith, for your information, copies of two dispatches from Mr. Dichman, then our minister at Bogota, in which the merits of the demand are forcibly presented. Although the circumstances made the argument somewhat special, as applying to a specific law, and to the peculiar *status* of Colon and Panama as free ports, you will find in these dispatches ample material for fortifying your representations to the Venezuelan Government in the premises. You may, also, profitably consult the remaining correspondence on the subject, found in the volumes of foreign relations for 1875, 1879, and 1880, which are, or should be, in the library of your legation.

"It may be convenient to note herein, briefly, a few points to which prominence should be given.

"In the first place, the existing rule in Venezuela is deemed to be in contravention of the spirit of perfect equality and reciprocity of commerce and navigation between the two countries, as stipulated in the abrogated treaty of 1836, and as pervading the existing treaty of 1860. The law of the United States, following the usage of most civilized countries, provides that the custody of the papers of foreign ships shall rest with the consuls of their nations, and this because such custody is deemed essential to that consular control over national vessels which is stipulated in all our treaties. It cannot be expected that the United States will unreservedly yield to the authorities of a foreign state a measure of control over our vessels in their ports which is not permitted by our own law to be exercised by our own officers in our own ports, over foreign vessels, except as a retaliatory measure in the absence of reciprocity. In this connection it may be well for you to examine as to the provisions of Venezuelan law touching the custody of the papers of Venezuelan vessels in foreign ports. I make this suggestion because in the discussion of this question with Colombia it was found that the Colombian law was strangely inconsistent in requiring Colombian consuls abroad to take charge of the papers of vessels of their nation, while denying a reciprocal practice to foreign consuls in Colombia. If a like law should be found on the Venezuelan statute books, no stronger argument in our favor could be devised.

"You should also, in this relation, call attention to the twenty-sixth article of the treaty of 1860, and ask how it is expected that an American consul can *exhibit* the register and crew-roll of an American vessel in proceedings for the arrest of deserters, if at no time he is permitted to have possession of those papers.

"In the second place, apart from considerations of reciprocity founded on treaty, the sacredness of the principles of reciprocity as an enduring basis of international intercourse under the law of nations may be forcibly invoked to sustain our position. A vessel, under a civilized flag on the high seas or in a foreign port, possesses a national life of which its papers are the strongest evidence. They are to all intents a part of the vessel itself. To assume that by the act of entering a friendly port, a vessel is to be stripped of that which is in a large measure essential to the proof of its nationality, and to await the pleasure of a local foreign officer before such part of its life can be restored to it, is inconsistent with international principles and usage. Hence, we find that the custom of nations (with but few exceptions in the Spanish-American ports of South America) recognizes the consul of the vessel's nationality as the sole guardian of all national rights appertaining thereto. The exceptions to which I refer (and which are happily growing fewer as the principles of international intercourse are better understood) rest on no broad principle of comity; they violate comity, on the contrary, by asserting a painful spirit of distrust. It is, as Mr. Dichman aptly expresses it in a dispatch of September 4, 1879 (Foreign Relations, 1880, page 313),

much as though it were regarded by the local authorities as a more effective pledge to prevent a ship's leaving a port to have material possession of her register 'than if the rudder had been unshipped.' The form in which this distrust is expressed, moreover, seems to evidence a misapprehension as to the nature and value of a ship's register. As I have said above, the register is the evidence of the ship's nationality, and as such, with the ship itself, are properly within the continuous jurisdiction of the vessel's nation, and, therefore, in a foreign port, within the jurisdiction of the consul of that nation.

"In the next place, a conclusive reason for the custody of a ship's papers by the consul of her nation is found in the necessity of preventing frauds against individuals in connection with marine survey, repairs, bottomry bonds, the right of absent owners, &c., and protection of the rights of seamen. It is for these purposes that the legislation of nations provides that the register of a vessel while in port shall pass out of the control of her commander and into the custody of the consul. It is not at all necessary that these diversified rights should be subservient to the local police surveillance while in a foreign port, and yet the rule existing in Venezuela so subordinates them. Moreover, the exercise of these several rights over a vessel for which the laws of her nation make abundant provision is rendered almost impossible by the passage of the papers out of the control of the nation to which the vessel belongs.

"Finally, in your conversation with General Guzman Blanco, you have set forth the considerations of convenience which should have weight in determining the question. The loss of important ship's papers while in foreign custody has been only too common an occurrence in the countries where this obnoxious regulation obtains. The correspondence with Colombia shows that this was admitted as a powerful objection to the practice, and you can doubtless adduce examples occurring in Venezuela to strengthen your point. I must compliment you, too, on your aptness in meeting General Guzman Blanco's objection that if any feeling of distrust were shown in this matter, it lay in an endeavor to take from the local officers the custody of a foreign vessel's papers. We do not seek to take from Venezuela a recognized right because we distrust its exercise; we simply wish to retain for our own consuls a right which we deem pertains to them as the representatives of our national sovereignty, and one which is claimed and recognized as just among maritime nations.

"I infer from the request of General Guzman Blanco that he is not tenacious of the point, but rather asks for so conclusive a statement of our position as would warrant him in bringing the matter to the consideration of the Venezuelan Congress, with a view to asking such modification of existing law as will put Venezuelan legislation in this respect in harmony with the legislation and usage of maritime countries throughout the world. You will, therefore, in presenting to him a succinct memorandum founded on this dispatch, set the question forth on

its merits, as aiming to facilitate a needed reform rather than as aggressively combatting an assumed intent to adhere to an obnoxious system."

Mr. Frelinghuysen, Sec. of State, to Mr. Baker, Nov. 29, 1882. MSS. Inst., Venez.; For. Rel., 1882.

"In continuance of correspondence heretofore touching the export tax of 40 cents per capita levied by the consuls of Spain in the United States upon shipments of cattle for Cuba and Porto Rico, I inclose herewith copy of a letter from the Secretary of the Treasury, showing that between December 2, 1881, and October 13, 1882, there have been collected by the Spanish vice-consul at Key West fees to the amount of $9,260 on 23,150 head of cattle exported to various Cuban ports.

"It is to be noted that the Secretary of the Treasury describes this tax as collected 'for affixing the vice-consul's signature to the manifests of the exporting vessels.'

"It is possible that there may be some inexactness in this statement. Article 48 of the Spanish consular tariff fixes this fee in connection with the *facturas* (invoices) of the shippers, which are to be presented to the consul and by him compared with the manifest and with copies of the *conscimientos* (bills of lading) given by the master of the vessel, to verify their correctness. Even in this light the transaction is open to the gravest objections as a virtual export tax; but if the fee is charged for simple legalization of the manifest, in addition to the fee separately prescribed for such legalization, it is not only irrational but intolerable.

"Your late dispatches indicate a disposition on the part of his excellency the Marquis de la Vega de Armijo to examine the question in the light of equity and international right and comity. It is hoped that a favorable decision in this regard is not far distant; for, in the absence of a recognition by Spain of the justice of our contention, this Government will be reluctantly forced to consider measures whereby a retaliatory charge may be imposed on the Spanish shipments to the United States."

Mr. Frelinghuysen, Sec. of State, to Mr. Reed, Jun. 12, 1883. MSS. Inst., Spain; For. Rel., 1882.

"The frequent recurrence of these arbitrary seizures of American vessels by the Mexican customs officers in the Gulf and Pacific ports of that Republic is becoming a matter of serious anxiety to this Government in view of the possible effect such proceedings may ultimately have on the commerce of both nations. The similarity of institutions, the close neighborhood, and the community of interests of the two great North American Republics, no less than the permanent and abiding friendship that exists between both Governments, renders it most desirable that every obstacle and impediment to the growth and progress of this commerce, which this Government, in common with that

of Mexico, is at the moment so earnestly engaged in fostering, should be as far as practicable removed. In most instances these arbitrary and irregular proceedings are directed against small vessels, and often in their results involve losses far beyond the pecuniary value of the vessel. The masters are driven to the courts for redress, often by appeal to the Supreme Court, at great expense; and the instances are few, if, indeed, any can be found, where the courts have sustained the action of the customs officers. In bringing the present claim to the attention of the minister for foreign affairs, which you will do with as little delay as convenient, you will also submit to the minister, for the consideration of the Government, these general suggestions which I have felt it my duty to offer."

Mr. Frelinghuysen, Sec. of State, to Mr. Morgan, Jan. 31, 1883. MSS. Inst., Mexico.

"Your dispatch No. 562, of the 6th instant, relating to the case of the Adriana at La Paz, has been received and has had careful attention.

"As your dispatch shows you to have been fully informed of the facts upon the date of writing, there is no present need of herein reciting the case.

"Your conclusion accords with that of this Department, that the case, on the admitted statements, presents certain grave features.

"1. The refusal of the Mexican authorities to allow Captain Caleb to have access to the consul when arrested, or when called upon to plead.

"2. Their action in requiring Captain Caleb to sign certain declarations while *incommunicado* and without knowledge of their purport, especially as it appears that these so-called declarations may be relied upon to establish the Mexican claim that Captain Caleb admits a violation of the criminal law of Mexico. That Captain Caleb signed the papers in question under bodily fear or constraint is not yet fully established. If it were, it would lend an exceptional gravity to the case.

"3. The refusal of the collector to permit the consul to visit the vessel.

"It is of course impossible to judge fully of the case until the text of the so-called declarations of Captain Caleb is known. It may be assumed, however, from the character of the sworn declarations made by him and his officers before Consul Viosca that it could not have been his intelligent or voluntary intention to put his name to a confession that he was willfully violating the laws of Mexico in regard to smuggling. * * *

"If you have not already done so, you will now address Señor Mariscal, asking an examination, and requesting copies of the *declarations* signed by Captain Caleb. You will intimate to the minister that

the manner in which Captain Caleb alleges he was constrained to sign papers of the contents of which he was ignorant, and while deprived of the assistance of the consul for his intelligent protection against any misunderstanding on his part, is regarded as an irregularity which, in the judgment of this Government, will deprive those declarations of any moral weight if they be trusted to sustain the charge of smuggling brought against the captain. And you will further intimate that the whole course of the proceedings appears to be so inconsistent with the principles recognized in the intercourse of maritime states that persistence in the prosecution of Captain Caleb on those premises could not fail to call forth the most earnest remonstrance of this Government.

"It is not the desire or purpose of this Government to screen any of its citizens who may have willfully violated foreign law. But it is its plain duty to endeavor by every legitimate means to secure for its citizens under accusation of wrong-doing such justice and impartiality of treatment and such safeguards for their defense as shall entitle the judgment reached to the respect which judicial proceedings should everywhere command.

"If the rules of international justice shall appear to have been in any way infringed, it is the undeniable right and obligation of this Government to interpose its diplomatic offices to insure a fair trial.

"To so practical a jurist as yourself these brief indications will suffice for the present conduct of this case."

Mr. Frelinghuysen, Sec. of State, to Mr. Morgan, Feb. 20, 1885. MSS. Inst., Mex.; For. Rel., 1883.

"Mr. Reed's No. 221, of the 28th ultimo, has been received, and the reply of the Spanish Government therewith transmitted, in relation to the Spanish consular fee, has been considered.

"I must express my disappointment that the matter, after so laborious a correspondence, during which the views of this Government have been most clearly set forth and consideration thereof promised by Spain, should now stand in the very unsatisfactory condition to which it is brought by the note of the Marquis de la Vega de Armijo of the 20th May.

"The files of your legation contain such precise instructions on the points in dispute that I need do no more than refer you to the records for a full view of our position in the controversy. Briefly, however, we claimed that the fee imposed represented no clerical act of the consul and afforded no guarantee to the home Government that the invoices are themselves correct, or that they correspond with the manifest, and therefore that the charge of 10 cents per ton or 40 cents per head of cattle, when levied by the consul, amounted simply to an export tonnage or per capita tax levied by Spain within the territory of a friendly state. His excellency the Marquis de la Vega apparently

admits the justice of the second stage of this argument, for he proposes to get rid of the question, so far as the practical levying of an export tax in foreign countries is concerned, by making the tax collectible within Spanish jurisdiction.

"This proposition is one which can only be regarded with astonishment. Either the tax is a consular one, representing a fee for a service performed by a consular officer and applicable to the maintenance of the consular system, or it is nothing more than a revenue tax levied on exports from foreign ports for the benefit of the Spanish treasury. We have claimed, with strong support of argument, as we think, that the charge is not properly a consular one, but in its nature and mode of payment, a revenue tax. The reply of the Spanish Government makes the charge in fact as well as in principle the very revenue tax we claimed it to be and proposes to direct its collection in Spain. If the charge is in principle a proper consular charge, it is a proper one to be collected by the consuls themselves. If not a proper one to be collected by the consuls on their own behalf, propriety is not to be communicated to it by trusting the goods, so to speak, for the amount of the tax, until they come within Spanish jurisdiction.

"My argument assumes that the charge, even if to be collected in Spanish jurisdiction, remains, in the judgment of the Spanish Government, a consular charge, and that the assumed right to collect it arises out of certain transactions to which the exporters, on the one hand, and the Spanish consul in the United States on the other, are respectively parties. In such a case this Government is unable to see that a change in the mere place of payment would change the nature of the fact in which the alleged obligation to pay originates. The objectionable tax would remain as before, in essence, an export tax *levied* in the United States, although its material *collection* may be performed in a Spanish port.

"There is but one way in which the proposal to collect 10 cents per ton of cargo from the vessels of the United States in Spanish ports could be regarded as defensible under international law, and that is by abandoning altogether the sophistical contention that it is a consular fee, and collecting it as a distinct import tax, levied in Spanish ports, in addition to customs and other import dues prescribed by existing law. If so levied and collected on all foreign cargoes brought within Spanish jurisdiction, without distinction of flag, this Government could not controvert the perfect right of Spain to adopt such a measure; but it could not look with equanimity on any partial measure, the practical result of which would be the imposition of a discriminating duty of 10 cents per ton against the cargoes of vessels going from the United States to ports of Spain. The answer of the Marquis de la Vega is understood to propose the establishment of such a *de facto* discrimination. He says that the obnoxious tax, instead of being col-

lected at the Spanish consulates in the United States, will be exacted by the collectors of customs at the port of destination. It does not appear that the modified form of collection is to apply to importations into Spain from any other country than the United States.

"It seems necessary, even after all that has been heretofore said, to direct you to make clear to his excellency the Marquis de la Vega the difference between our consular fee for the verification of an invoice and the Spanish consular tax on the tonnage of the vessel's cargo.

"The act of a United States consul in a foreign country, with respect to an invoice presented to him, is a distinct and responsible service destined to protect bona fide shippers and the revenue alike from frauds by undervaluation and otherwise.

"The validity of the transaction is scrutinized at every step. The exporter must be known to the consul, he must appear before him and make oath that the descriptions and valuations of the goods are correct, and the consul must examine the prices given, and assure himself that the goods are honestly valued. The consul must, in certain cases, procure and forward to his own Government samples of his invoiced goods. The invoice is executed under oath in triplicate, one copy being recorded in the consulate, one copy being forwarded to the collector of customs at the port of destination, and the third being delivered to the exporter.

"In the event of there being ground to expect fraud or undervaluation, the consul must collect evidence as to the market value of the goods, and forward a report by the same mail to the collector at the port of destination. When the amount of clerical labor is considered, the United States charge of $2.50 for the entire operation, irrespective of the amount or value of the invoiced goods, is believed to be reasonable and just. It certainly corresponds, as a fee, to a service performed by the consul. The service being uniform, the fee is so likewise, and is paid by the person to whom the service is rendered.

"The Spanish tax is wholly different. It purports to be for comparing the invoices and bills of lading with the vessel's manifest. It is a distinct fee from that for authenticating the manifest, for which from 30 to 50 *pesetas* ($6 to $10) is demanded. The bills of lading are submitted by the captain with his manifest, and are simply compared by the consul. I am unaware what useful purpose the operation subserves as a guarantee. If its effects were to establish under the consul's certificate the fact of conformity between a bill of lading and the ship's manifest, and so exempt the captain of the vessel from a vexatious fine when the goods are found to differ from the manifest weight or description, an object might be discerned worthy of consideration. But in any aspect of the case the service performed by the consul is practically invariable, while the fee varies and is computed on a basis wholly disconnected from the consular act, and bearing no conceivable logical relation thereto. The Spanish consular fee is, in short, a pro rata tax on

the cargo of the vessel, and not a specific fee for a specific act performed by a Spanish officer.

"Not only is the reply of the Marquis de la Vega unsatisfactory in its general aspect, but it is even more so with respect to the particular reclamations made for the return of the excessive capitation charged on cattle shipped from Key West by Mr. McKay and others. His excellency admits that the tax was wrongfully collected; that the circular of the 18th October, 1876, suppressed the charge of 40 cents per capita and substituted a tonnage tax of 10 cents, and that the unlawful collection of the old rates, notwithstanding their formal abrogation, has only recently been put a stop to.

"It does not appear to this Government a sufficient or just reparation for a wrongful act admittedly perpetrated by the Spanish officers of the consulate at Key West since 1876 to give orders that hereafter the wrongful tax shall not be collected. The case is conceived to be one where no less a reparation than the return of the illegally collected excess could satisfy either the right pertaining to the United States or the high sense of justice of Spain. It will doubtless be enough for you to call the attention of the minister of state to this point to insure the cheerful correction of the oversight, and a prompt offer to refund the overcharge in question."

Mr. John Davis, Acting Sec. of State, June 23, 1883, to Mr. Foster. MSS. Inst., Spain; For. Rel., 1883.

Fraud, when essential to sustain a custom-house confiscation, is only to be held to exist when plainly to be inferred from the facts.

Mr. Frelinghuysen, Sec. of State, to Mr. Foster, Feb. 25, 1884. MSS. Inst., Spain.
Mr. Bayard, Sec. of State, to Mr. Foster, July 25, 1885. MSS. Inst., Spain.

An American vessel, having been embargoed in a port of Brazil by competent authority, was unlawfully taken away by her master, without the payment of the required charges, and brought to New York. It was advised that, as the act of the master did not violate any statute of the United States, the request of Brazil that measures be taken against him by this Government could not be complied with.

16 Op., 282, Devens, 1879.

Under the Constitution of the United States a statute of a State enacting that the masters and wardens of a port within it should be entitled to demand and receive, in addition to other fees, the sum of $5, whether called on to perform any service or not, for every vessel arriving in that port, is a tonnage tax, and is unconstitutional and void.

Steamship Company *v.* Port Wardens, 6 Wallace, 31.

It has also been held that while taxes levied by a State upon vessels owned by its citizens as property, and based on a valuation of the same, are not prohibited by the Federal Constitution, yet taxes cannot be imposed on them by the State "at so much per ton of the registered tonnage."

Such taxes are within the prohibition of the Constitution that "no State shall, without the consent of Congress, lay any duty of tonnage." Nor is the case varied by the fact that the vessels were not only owned by citizens of the State, but exclusively engaged in trade between places within the State.

State tonnage tax cases, 12 Wallace, 204.

Any duty, or tax, or burden imposed under the authority of the States, which is in its essence a contribution claimed for the privilege of arriving and departing from a port of the United States, and which is assessed on a vessel according to its carrying capacity, is a tonnage tax within the meaning of the Federal Constitution, and therefore void.

Cannon v. New Orleans, 20 Wallace, 577.

XV.—*EXEMPTION FROM STRESS OF WEATHER, VIS MAJOR, OR INADVERTENCE.*

§ 38.

Where a coasting vessel, bound from one port to another in the United States, is carried by mutineers into a foreign port, the lawful officers of such vessel are entitled to aid from the local authorities of such port in recovering control.

Mr. Webster, Sec. of State, to Mr. Everett, Dec. 28, 1841. MSS. Inst., Gr. Brit. Same to same, Feb. 12, 1842. (Creole case.)

The cargo of a ship driven by stress of weather, or carried by mutiny into a foreign port, is not subject to confiscation or disposal in such port, because it may consist of articles which are there held not to be the subjects of property.

Mr. Webster, Sec. of State, to Mr. Everett, Dec. 28, 1841. MSS. Inst., Gr. Brit.

[In this case the cargo consisted of slaves, but Mr. Webster, in his argument, extended the principle to goods which (*e. g.*, opium) might be held not to be the subject of property in the port of refuge.]

"In cases of vessels carried into British ports by violence or stress of weather, we insist that there shall be no interference from the land with the relation or personal condition of those on board, according to the laws of their own country; that vessels under such circumstances shall enjoy the common laws of hospitality, subjected to no force, entitled to have their immediate wants and necessities relieved, and to pursue their voyage without molestation."

Mr. Webster to Mr. Everett, June 28, 1842; 2 Curtis's Life of Webster, 106.

Lord Aberdeen took the position with Mr. Webster that the parties who had mutinied and carried off the Creole were "very innocent individuals, who had chosen to come to her Majesty's dominions with a ship the possession and control of which they had very rightfully obtained."

* * * "You will have seen what passed in the court of Nassau, when the consul of the United States made an attempt to bring the mutineers and murderers to trial as pirates. We have never said nor supposed they could be tried in the British courts as pirates; but the chief justice of the Bahama Islands completely justifies these persons for all they have done, and goes out of his way to express doctrines and sentiments which appear to us absolutely ferocious."

2 Curtis's Life of Webster, 99.
Mr. Webster to Mr. Everett, June 29, 1842.
See discussion in 2 Benton's Thirty years in U. S. Senate.

"A vessel on the high seas, beyond the distance of a marine league from the shore, is regarded as part of the territory of the nation to which she belongs, and subjected exclusively to the jurisdiction of that nation. If, against the will of her master or owner, she be driven or carried nearer to the land, or even into port, those who have or ought to have control over her struggling all the while to keep her upon the high seas, and so within the exclusive jurisdiction of her own Government, what reason or justice is there in creating a distinction between her rights and immunities in a position thus the result of absolute necessity, and the same rights and immunities before superior power has forced her out of her voluntary course?

"But, my Lord, the rule of law and the comity and practice of nations go much further than these cases of necessity, and allow even to a merchant vessel coming into any open port of another country voluntarily for the purposes of lawful trade, to bring with her and keep over her to a very considerable extent the jurisdiction and authority of the laws of her own country, excluding to this extent, by consequence, the jurisdiction of the local law. A ship, say the publicists, though at anchor in a foreign harbor, preserves its jurisdiction and its law. It is natural to consider the vessels of a nation as parts of its territory, though at sea, as the state retains its jurisdiction over them; and, according to the commonly received custom, this jurisdiction is preserved over the vessels even in parts of the sea subject to a foreign dominion.

"This is the doctrine of the law of nations clearly laid down by writers of received authority, and entirely conformable, as it is supposed, with the practices of modern nations.

"If a murder be committed on board of an American vessel by one of the crew upon another, or upon a passenger, or by a passenger on one of the crew or another passenger, while such vessel is lying in a port within the jurisdiction of a foreign state or sovereignty, the offense is cognizable and punishable by the proper court of the United States in the same manner as if such offense had been committed on board the vessel on the high seas. The law of England is supposed to be the same.

"It is true that the jurisdiction of a nation over a vessel belonging to it, while lying in the port of another, is not necessarily wholly exclusive. We do not so consider or so assert it. For any unlawful acts done by her while thus lying in port, and for all contracts entered into while there by her master or owners, she and they must doubtless be answerable to the laws of the place. Nor, if her master or crew, while on board in such port, break the peace of the community by the commission of crimes, can exemption be claimed for them. But, nevertheless, the law of nations, as I have stated it, and the statutes of Governments founded on that law, as I have referred to them, show that enlightened nations, in modern times, do clearly hold that the jurisdiction and laws of a nation accompany her ships not only over the high seas, but into ports and harbors, or wheresoever else they may be water-borne, for the general purpose of governing the rights, duties, and obligations of those on board thereof, and that to the extent of the exercise of this jurisdiction they are considered as parts of the territory of the nation herself.

"If a vessel be driven by weather into the ports of another nation, it would hardly be alleged by any one that, by the mere force of such arrival within the waters of the state, the law of that state would so attach to the vessel as to affect existing rights of property between persons on board, whether arising from contract or otherwise. The local law would not operate to make the goods of one man to become the goods of another man. Nor ought it to affect their personal obligations or existing relations between themselves; nor was it ever supposed to have such effect until the delicate and exciting question which has caused these interferences in the British islands arose. The local law in these cases dissolves no obligations or relations lawfully entered into or lawfully existing according to the laws of the ship's country. If it did, intercourse of civilized men between nation and nation must cease. Marriages are frequently celebrated in one country in a manner not lawful or valid in another; but did anybody ever doubt that marriages are valid all over the civilized world, if valid in the country in which they took place? Did any one ever imagine that local law acted upon such marriages, to annihilate their obligation, if the parties should visit a country in which marriages must be celebrated in another form? * *

"A merchant vessel enters the port of a friendly state and enjoys while there the protection of her own laws, and is under the jurisdiction of her own Government, not in derogation of the sovereignty of the place, but by the presumed allowance or permission of that sovereignty. This permission or allowance is founded on the comity of nations, like the other cases which have been mentioned; and this comity is part, and a most important and valuable part, of the law of nations, to which all nations are presumed to assent until they make their dissent known. In the silence of any positive rule, affirming or denying or restraining the operation of foreign laws, their tacit adoption is presumed to the

usual extent. It is upon this ground that courts of law expound contracts according to the law of the place in which they are made; and instances almost innumerable exist in which, by the general practice of civilized countries, the laws of one will be recognized and often executed in another. This is the comity of nations, and it is upon this, as its solid basis, that the intercourse of civilized states is maintained.

"But while that which has now been said is understood to be the voluntary and adopted law of nations, in cases of the voluntary entry of merchant vessels into the ports of other countries, it is nevertheless true that vessels in such ports only through an overruling necessity, may place their claim for exemption from interference on still higher principles; that is to say, principles held in more sacred regard by the comity, the courtesy, or, indeed, the common sense of justice of all civilized states.

"Even in regard to cases of necessity, however, there are things of an unfriendly and offensive character, which yet it may not be easy to say that a nation might not do."

Mr. Webster, Sec. of State, to Lord Ashburton, Aug. 1, 1842. MSS. Notes, Great Britain; 6 Webster's Works, 303–13.

"Mr. Wheaton wrote an article upon this subject in the Revue Française et Étrangère, ix, 345, in which he took the ground that the Creole never passed under British jurisdiction so as to affect the legal relations of persons and things on board, or to give the British Government such jurisdiction over the persons on board as to make the case one of extradition; and that the master, with such aid as he could obtain from the consul or otherwise, was entitled, not only to carry to the United States all the persons on board, whether held as slaves or criminals, without molestation from the authorities, but to receive the assistance of those authorities to regain and hold possession of his vessel."

Dana's Wheaton, § 103, note 62.

A vessel forced by stress of weather, or any *vis major*, to take refuge in the port of a foreign power is not considered as subject to the municipal law of that power, so far as concerns any penalty, prohibition, tax, or incapacity that would be incurred by otherwise entering the port; provided she does nothing during her stay to violate the municipal law. It was accordingly held in the case of an American vessel seized by her cargo of slaves and taken into a port under the dominion of Great Britain, that the slaves could not be treated as free by the British authorities, at least so long as they continued on board the vessel.

The Creole, 4 Op., 98, Legaré, 1842.

Mr. Bates, the umpire in the British-American arbitration of 1853, in his opinion in favor of the claimants, took the following positions:

"The Creole was on a voyage, sanctioned and protected by the laws of the United States and by the law of nations. Her right to navi-

gate the ocean could not be questioned, and, as growing out of that right, the right to seek shelter or enter the ports of a friendly power in case of distress or of any unavoidable necessity. A vessel navigating the ocean carries with her the laws of her own country, so far as relates to the persons and property on board, and, to a certain extent, retains these rights even in the port of the foreign nations she may visit." * * * "The municipal law of England cannot authorize a magistrate to violate the law of nations by invading with an armed force the vessel of a friendly nation that has committed no offense, and forcibly dissolving the relations which, by the laws of his country, the captain is bound to preserve and enforce on board. These rights, sanctioned by the law of nations, viz, the right to navigate the ocean and to seek shelter in case of distress or other unavoidable circumstances, and to retain over the ship, her cargo, and passengers the laws of her country, must be respected by all nations, for no independent nation would submit to their violation."

Rep. Com. of 1853, 244, 245. See App., Vol. III, § 38.

"The case of the Creole presents an extreme example of this refusal on the part of nations to recognize the law of the domicile where it sanctions slavery. This vessel, containing slaves in transportation from one port of the United States to another, was by their act forced to put into a port of the Bahama Islands in the winter of 1841–'42. The slaves having secured for themselves a refuge on shore, the colonial authorities, and afterwards the British Government, refused to give them up, as being free persons. If the slaves had merely fled to British territory, it was conceded that they could not be demanded back. But it was contended by Mr. Webster, that the law of nations exempts from interference property on vessels driven into foreign ports by disasters of the sea, or carried there by unlawful force. This exemption from territorial law is undoubtedly made by the law of nations. But the question is, whether such a rule of comity and humanity should override a greater act of humanity and compel the territorial authorities to use force in order to prevent the slaves from retaining their liberty. By what process could this be done in a land where slavery is unknown, and how could a passenger be required to return on board a certain vessel which he had left?

"It is to be observed, however, in regard to applications of foreign law, which the moral sense or political principles of a nation reject, that questions growing out of a status which cannot be recognized by the courts, if they do not affect the personal capacity itself, may be decided according to the foreign law. Thus a contract relating to the sale and purchase of slaves might be held legal, if legal in the domicile of the contracting parties. And it is probable that the children of a polygamist Turk, by a second or third wife, would not be treated as bastards in all respects by Christian courts."

Woolsey, § 70.

The correspondence in the Creole case is discussed by Calvo, Droit Int., 3d ed., vol. ii, 269, *ff.*

As to Creole case, see, further, Brit. and For. St. Pap. for 1841–'42; vol. 30, 181; Abdy's Kent (1878) 149; 4 Phill. Int. Law, 2d ed., 15; 2 Benton's Thirty Years, &c., 408. App., Vol. III, § 38.

"A convention was concluded at Madrid on the 5th of March, 1860, establishing a joint commission for the final adjudication and payment of all the claims of the respective parties. By this the validity and amount of the Cuban claims were expressly admitted, and their speedy payment was placed beyond question. The convention was transmitted to the Senate for their constitutional action on the 3d of May, 1860, but on the 27th of June they determined, greatly to the suprise of the President and the disappointment of the claimants, that they would 'not advise and consent' to its ratification.

"The reason for this decision, because made in executive session, cannot be positively known. This, as stated and believed at the time, was because the convention had authorized the Spanish Government to present its Amistad claim, like any other claim, before the board of commissioners for decision. This claim, it will be recollected, was for the payment to the Spanish owners of the value of certain slaves, for which the Spanish Government held the United States to be responsible under the treaty with Spain of the 27th October, 1795. Such was the evidence in its favor that three Presidents of the United States had recommended to Congress to make an appropriation for its payment, and a bill for this purpose had passed the Senate. The validity of the claim, it is proper to observe, was not recognized by the convention. In this respect it was placed on the same footing with all the other claims of the parties, with the exception of the Cuban claims. All the Spanish Government obtained for it was simply a hearing before the board, and this could not be denied with any show of impartiality. Besides, it is quite certain that no convention could have been concluded without such a provision.

"It was most probably the extreme views of the Senate at the time against slavery, and their reluctance to recognize it even so far as to permit a foreign claimant, although under the sanction of a treaty, to raise a question before the board which might involve its existence, that caused the rejection of the convention. Under the impulse of such sentiments, the claims of our fellow-citizens have been postponed if not finally defeated. Indeed, the Cuban claimants, learning that the objections in the Senate arose from the Amistad claim, made a formal offer to remove the difficulty by deducting its amount from the sum due to them, but this, of course, could not be accepted."

Mr. Buchanan's defense quoted 2 Curtis's Buch., 223.
As to Amistad case, see, fully, *infra* § 161.

"The case of the Rebecca is one of a number which have lately happened in various parts of the world under the Spanish or Spanish-American law. From Manila, from Spain, from Cuba, from Venezuela, from Mexico, the same story comes of vessels driven by stress of weather to deviate in some measure from the plan of their voyage, and punished by heavy fines, or even confiscation, because the documents

or cargo do not conform to the rules laid down for regular direct importations. The frequency with which cases of inhospitable treatment like this are brought to the notice of this Government is a cause of apprehension. Some of the instances which have come under our observation show subjection to treatment not far removed from the ancient rule by which a vessel out of her course or stranded on strange coasts became lawful plunder. The course of modern civilization has exempted shipwrecked vessels and crews from inhospitable treatment, and it may not be chimerical to hope for a better international understanding which may leniently free a vessel in distress from the perils of a rigid interpretation of the letter of a law applicable only to regular and undistressed arrivals."

Mr. Frelinghuysen, Sec. of State, to Mr. Morgan, Apr. 7, 1884. MSS. Inst., Mexico.

A vessel "anchored outside of the bar, near the harbor of Tampico, in an exceptionally rough sea, at the close of a severe storm, which rendered it unsafe for her to attempt to cross the bar or enter the harbor," "could scarcely be said, with strict propriety, to have been in Mexican waters."

Mr. Frelinghuysen, Sec. of State, to Mr. Morgan, May 17, 1884. MSS. Inst., Mex.; For. Rel., 1884.

A United States merchant vessel, driven into a Mexican port against the will of her officers, and by storms which they could not prudently escape, is entitled to redress from Mexico, through the agency of this Department, for injury sustained by her from being run into negligently by a Mexican cruiser.

Mr. Bayard, Sec. of State, to Mr. Jackson, July 2, 1885. MSS. Inst., Mex.

Casus, in such cases, is a defence to a charge of invasion of port laws.

Same to same, Sept. 14, 1885, *id.*

As to Venezuelan penalties on vessel seeking port in distress see Mr. Frelinghuysen, Sec. of State, to Mr. Baker, Feb. 18, 1884; April 1, 1884. MSS. Inst., Venez.

The Rebecca was a United States merchant vessel engaged in the coastwise trade. She was bound for Tampico, Mexico, but had on board some packages for Brazos, Texas. When she arrived off Brazos, she was met by a violent storm which drove her south, and after it abated she made for Tampico. There she was seized, and because the packages intended for Brazos were not on her Mexican manifest she and her cargo were confiscated. The question of law in the case is whether, the packages intended for Brazos having been brought into Tampico through stress of weather, the vessel was "liable to penal process in such port either for 'smuggling' or for 'bringing goods into the port without proper papers.'

"I contend that this vessel was not so liable, and to have seized and confiscated the Rebecca under the circumstances of her enforced entrance into Tampico appears to have been a peculiar and unreasonable hardship. It has been frequently held by this Government, in conformity with repeated rulings of the courts in similar cases, that *casus* or unavoidable necessity is a defense to any charge of invasion of custom-house regulations."

Mr. Porter, Acting Sec. of State, to Mr. Jackson, Sept. 14, 1885. MSS. Inst., Mexico; affirmed by Mr. Bayard, Sec. of State, to Messrs. Shellabarger and Wilson, May 26, 1886, MSS. Dom. Let. See App., Vol. III, § 38.

Where goods are brought by superior force, or by inevitable necessity, into the United States, they are not deemed to be so imported as necessarily to attach the right to duties. If, however, such goods are afterwards sold or consumed in the country, or incorporated in the general mass of its property, they become retroactively liable to the payment of duties.

Brig Concord, 9 Cranch, 387.

Alleged excuse of distress repelled, on libel under the non-intercourse acts, and condemnation pronounced.

The New York, 3 Wheaton, 59.

Under the act of February 28, 1803, § 2, the master of an American vessel which touches at a foreign port to obtain advices, but does not enter nor do any business there, is not bound to deposit the register with the consul of the United States; such presence in port is not an "arrival" within the meaning of that act.

Harrison *v.* Vose, 9 Howard, 372.

Where the detention of a foreign merchant vessel in port was caused by her resistance to the orders of the properly-constituted authorities, whom she was bound to obey, she preferring such detention to a clearance upon the conditions imposed, it was ruled that her owner, a subject of Prussia, is not entitled to any damages against the United States under the law of nations or the treaty with that power.

U. S. *v.* Diekelman, 92 U. S., 520.

The burden is on the party setting up necessity.

The Major Barbour, Blatch. Pr. Ca., 167; The Sunbeam, *id.*, 316, 656; The Diana, 7 Wall., 354.

On the requisition of the British minister, a British vessel and cargo which have been wantonly and feloniously taken into an American port in violation of our revenue laws, and there seized by the officers of the port for such violation, should be restored to an innocent owner. The forfeitures and penalties prescribed by our laws have never been inflicted on owners of vessels which have been brought within our jurisdiction by others' crime.

1 Op., 509, Wirt, 1821.

"A ship or vessel, on the high seas, in time of peace, and engaged in a lawful voyage, is, by the law of nations, under the exclusive jurisdiction of the state to which her flag belongs; and * * if forced by stress of weather, or other unavoidable cause, into a port of a friendly power, she would lose none of the rights appertaining to her on the high seas; but, on the contrary, she, with her cargo and persons on board, including their property and all the rights belonging to their personal relations, would be placed under the protection which the law of nations extends to the unfortunate in such cases."

Mr. Calhoun's speech on the case of the brigs Comet, Emporium, and Enterprise, March 13, 1840; 3 Calhoun's Works (by Crall6), 465.

For necessity in other relations, see *infra*, § 50. App., Vol. III, § 38.

XVI. *ARMING MERCHANT VESSELS.*

§ 39.

As to privateering, see *infra*, §§ 380–384.

"In answer to your request for an expression of opinion in regard to Mr. Ogden's question whether a vessel which he is said to be fitting out for a trading voyage to the South Sea Islands, can carry two guns and other arms for protection and defense against the natives, I am not aware of any international prohibition or of any treaty provision which would prevent a vessel trading amid the groups of islands of the South Sea from carrying a couple of guns and arms for the proper and necessary protection of the vessel against violence on the part of lawless or partially civilized communities, or of the piratical crews which are represented to occasionally frequent those waters, providing always that the vessel carrying such guns and arms itself be on a lawful voyage and be engaged in none other than peaceful commerce, and that such guns and arms be intended and be used solely for the purpose of defense and of self-protection."

Mr. Fish, Sec. of State, to Mr. Morrill, Feb. 8, 1877. MSS. Dom. Let.

But a merchant vessel using arms for acts of destruction on the high seas may be, unless duly commissioned for the purpose, a pirate.

Infra, § 380.

The Revised Statutes provide in this relation as follows:

"SEC. 5289. The owners or consignees of every armed vessel sailing out of the ports of the United States, belonging wholly or in part to citizens thereof, shall, before clearing out the same, give bond to the United States, with sufficient sureties, in double the amount of the value of the vessel and cargo on board, including her armament, conditioned that the vessel shall not be employed by such owners to cruise or commit hostilities against the subjects, citizens, or property of any foreign prince or state, or of any colony, district, or people, with whom the United States are at peace."

The law does not prohibit armed vessels belonging to citizens of the United States from sailing out of our ports; it only requires the owners to give security that such vessels shall not be employed by them to commit hostilities against foreign powers at peace with the United States.

U. S. *v.* Quincy, 6 Pet., 445.

XVII. *NEUTRALIZED WATERS.*

§ 40.

The treaty of Washington, of April 19, 1850 (Clayton-Bulwer), recites at the outset the desire of the parties to set forth by "a convention their views and intentions with reference to any means of communication by ship-canal, which may be constructed between the Atlantic and Pacific Oceans, by the way of the river St. Juan de Nicaragua and either or both of the lakes of Nicaragua or Managua, to any port or place on the Pacific Ocean." In Article V it is engaged "that when the said canal shall have been completed they will protect it from interruption, seizure, or unjust confiscation, and that they will guarantee the neutrality thereof, so that the said canal may forever be open and free, and the capital invested therein secure." But this neutrality and guarantee was conditioned on the managers making regulations "not contrary to the spirit and intention of the convention," and to the withdrawal six months' notice is requisite. It is further provided (Article VIII) that the contracting parties "having not only desired, in entering into this convention, to accomplish a particular object, but also to establish a general principle," agree to "extend their protection, by treaty stipulations, to any other practicable communications, whether by canal or railway, across the isthmus which connects North and South America, and especially to the interoceanic communications, should the same prove to be practicable, whether by canal or railway, which are now proposed to be established by way of Tehuantepec or Panama." The free use of such transit is to be open to all states joining in the guarantee.

This treaty is the only instance in which the United States has consented to join with any European power in the management of political interests in the western hemisphere; and the treaty is remarkable, not merely because it is a departure from the settled policy of the United States not to sanction any European interference in the affairs of America, but because, deviating in this way from our settled system, it undertakes, in concert with a foreign power, to determine a question the most important to the United States that can arise outside of our own territory. Hereafter, in §§ 57, 72, will be considered the general policy of the United States to which this is an exception, and in §§ 287, *ff*, the questions of international law immediately arising from our relations to the isthmus. It will also be hereafter shown that so far as the Clayton-Bulwer treaty (of 1850) relates to the then recent projected Nicaraguan canal, it is now obsolete, that canal having been abandoned, and the concession to it recalled by Nicaragua; and that the eighth article of the treaty, as given above, cannot any longer, from change of circumstances, and other causes, be enforced. *Infra*, § 150 *ff*.

Rivers which pass through several states are, as we have seen, neutralized, so far as concerns the several riparian sovereigns, sometimes by a tacit understanding of the law of nations to this effect, sometimes by treaty.

Supra, § 30.

The neutralization of the Rhine is thus limited by the twenty-sixth article of the treaty of Vienna of 1815.

"If it should happen that war should break out among the states of the Rhine, the collection of the customs shall continue uninterrupted without any obstacle being thrown in the way of either party. The vessels and persons employed by the custom-houses shall enjoy all the rights of neutrality."

On July 13, 1840, a convention was entered into at London between Great Britain, Austria, Prussia, Russia, and the Ottoman Porte "for the purpose of maintaining the principle that the passage of the Straits of Dardanelles and of the Bosphorus shall remain always closed against foreign ships-of-war while the Porte is at peace." France was not consulted as to this treaty, which was precipitated by the revolt of Mehemet Ali, whose relations with France were intimate, against the Porte. This exclusion was much resented by France, and for a time it seemed as if the "neutralization" in this case would be broken up by an immediate hostile attack. (See Guizot's Embassy to the Court of St. James, chapts. 6, 7.) Nor was the United States consulted, or in any way a party to the procedure, and is not, therefore, bound by the neutralization.

The treaty of Paris of 1856, to which most of the great European powers assented, but to which the United States was not a party, extended still further this neutralization. By its ninth article it provides that "the Black Sea is neutralized; its waters and its ports, thrown open to the mercantile marine of every nation, are formally and in perpetuity interdicted to the flag of war, either of the powers possessing its coasts or of any other power, with the exceptions mentioned in Articles XIV and XIX of the present treaty." By the tenth article of a supplementary treaty of the same date the "Sultan declared he was firmly resolved to maintain for the future the principle invariably established as the ancient rule of his Empire, and by virtue of which it has at all times been prohibited for the ships-of-war of foreign powers to enter the Straits of the Dardanelles and of the Bosphorus, and that, so long as the Porte is at peace, His Majesty will admit no foreign ships-of-war into the said straits." The six other signatories "engaged to respect this determination of the Sultan, and to conform themselves to the principle above declared." The clause as to the neutralization of the Black Sea was abrogated by the first article of the treaty of London, of March 13, 1857, but there was a renewal of the rule closing the Dardanelles and the Bosphorus to ships-of-war; the right being reserved, however, to the Sultan, of "opening them in time of peace to the vessels-of-war of friendly and allied powers, in case the Sublime Porte should judge it necessary, in order to secure the execution of the stipulations of the treaty of Paris of 30th March, 1856."

Great Britain, on August 27, 1856, solemnized with Honduras a treaty which may be regarded as an appendage to the clauses in the Clayton-Bulwer treaty above given. An "additional article," as it is called, to the British-Honduras treaty provides that "in consideration of the concessions previously named, and in order to secure the construction

and permanence of the route or road herein contemplated, and also to secure for the benefit of mankind the uninterrupted advantages of such communication from sea to sea, Her Britannic Majesty equally engages, in conjunction with the Republic of Honduras, to protect the same from interruption, seizure, and unjust confiscation from whatsoever quarters the attempt may proceed. The guarantee may be withdrawn if the managers act contrary to the spirit and intention of it."

Fauchille (Blocus Maritime, Paris, 1882, 184 *ff.*) discusses in detail the question of neutralization of canals. As to the United States, he says: "The doctrine which declares the canal inaccessible to belligerent vessels of war is adopted by treaties of commerce and navigation between the United States, on the one side (July 11, 1861, and June 24, 1867), and Great Britain, on the other side (Aug. 27, 1856, and Feb. 11, 1860), with Honduras and Nicaragua (Treat. and Conv. of the U. S., ed. 1873; Martens, Nouveau recueil général, 1re partie, XVI, 549; 2e partie, XVI, 380). It is, however, rejected in the Treaty of Washington (April 19, 1850), between the United States and Great Britain in respect to the projected Panama Canal." As is observed by Fauchille, the doctrine of the latter treaty treats the canal as territorial water, which belligerents can traverse, but in which they are not permitted to engage in acts of hostility, and not as territorial land, which they are not permitted to traverse. He calls attention, at the same time, to instructions by Mr. Blaine on June 24, 1881, to Mr. Lowell, minister at London, in which he declares that the United States would not recognize the right of hostile cruisers to pass through the canal.

The subject of the neutralization of the great South American rivers has been already incidentally noticed in this section. In its relation to Paraguay it will be discussed *infra*, § 321; in its relation to Peru, *infra*, § 157. See also exposition in Schuyler's Am. Diplomacy, 319 *ff.*

CHAPTER III.

INTERVENTION WITH FOREIGN SOVEREIGNTIES.

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I. *GENERAL RULE IS NON-INTERVENTION.*

§ 45.

"Europe has a set of primary interests which to us have none or a very remote relation. Hence, she must be engaged in frequent controversies, the causes of which are essentially foreign to our concerns. Hence, therefore, it must be unwise in us to implicate ourselves by artificial ties in the ordinary vicissitudes of her politics, or the ordinary combinations and collisions of her friendships or enmities. Our detached and distant situation invites and enables us to pursue a different course."

President Washington's Farewell Address, 1797.

"'You are afraid,' says Mr. Oswald to-day, 'of being made the tool of the powers of Europe.' 'Indeed, I am,' said I. 'What powers?' said he. 'All of them,' said I. 'It is obvious that all the powers of Europe will be continually manœuvering with us to work us into their real or imaginary balances of power. They will all wish to make of us a make-weight candle, when they are weighing out their pounds. Indeed, it is not surprising, for we shall very often, if not always, be able to turn the scale. But I think it ought to be our rule not to meddle; and that of all the powers of Europe, not to desire us, or, perhaps, even to permit us, to interfere, if they can help it.'"

Mr. John Adams's Diary, Nov 18, 1782; 3 John Adams's Works, 316.

"Peace is made between Russia and the Porte, and the definitive treaty between England and Holland is expected to be soon signed. May the world continue at peace! But if it should not, I hope we shall have wisdom enough to keep ourselves out of any broil. As I am quite in sentiment with the Baron de Nolken, the Swedish ambassador at St. James's, who did me the honor to visit me, although I had not visited him. 'Sir,' said he, 'I take it for granted that you will have sense enough to see us in Europe cut each other's throats with a philosophical tranquillity.'"

Mr. J. Adams to the President of Congress, February 10, 1784; 8 John Adams's Works, 178.

"I am sensible that your situation must have been difficult during the transition from the late form of government to the re-establishment of some other legitimate authority, and that you may have been at a loss to determine with whom business might be done; nevertheless when principles are well understood, their application is less embarrassing. We surely cannot deny to any nation that right whereon our own Government is founded, that every one may govern itself according to whatever form it pleases, and change these forms at its own will; and that it may transact its business with foreign nations through

whatever organ it thinks proper, whether king, convention, assembly, committee, president, or anything else it may choose. The will of the nation is the only thing essential to be regarded. On the dissolution of the late constitution in France, by removing so integral a part of it as the King, the national assembly, to whom a part only of the public authority had been delegated, appear to have considered themselves as incompetent to transact the affairs of the nation legitimately; they invited their fellow-citizens, therefore, to appoint a national convention."

Mr. Jefferson, Sec. of State, to Mr. Morris, March 12, 1793. MSS. Inst., Ministers. (See 3 Jeff. Works, 521.)

"We love and value peace; we know its blessings from experience. We abhor the follies of war, and are not untried in its distresses and calamities. Unmeddling with the affairs of other nations, we had hoped that our distance would have left us free, in the example and indulgence of peace with the world."

Mr. Jefferson, Sec. of State, to Messrs. Carmichael and Short, June 30, 1793. MSS. Inst., Ministers; 4 Jeff. Works, 9.

"The principle of foreign affairs, which I then advocated, has been the invariable guide of my conduct in all situations, as ambassador in France, Holland, and England, and as Vice-President and President of the United States, from that hour to this. * * * This principle was that we should make no treaties of alliance with any European power; that we should consent to none but treaties of commerce; that we should separate ourselves as far as possible, and as long as possible, from all European politics and wars. In discussing the variety of motions which were made as substitutes for Mr. Chase's, I was remarkably cool, and, for me, unusually eloquent. On no occasion, before or after, did I ever make a greater impression on Congress."

Mr. J. Adams to Dr. Rush, Sept. 30, 1805; 1 John Adams's Works, 200.

"If I could lay an embargo, or pass a new importation law against corruption and foreign influence, I would not make it a temporary but a perpetual law, and I would not repeal it, though it should raise a clamor as loud as my gag-law or your grog-law, or Mr. Jefferson's embargo."

Mr. J. Adams to Mr. Rush, Sept. 27, 1808; 9 John Adams's Works, 604.

"Our form of government, inestimable as it is, exposes us more than any other, to the insidious intrigues and pestilent influence of foreign nations. Nothing but our inflexible neutrality can preserve us. The public negotiations and secret intrigues of the English and the French have been employed for centuries in every court and country of Europe. Look back to the history of Spain, Holland, Germany, Russia, Sweden, Denmark, Prussia, Italy, and Turkey, for the last hundred years. How many revolutions have been caused! How many emperors and kings

have fallen victims to the alternate triumphs of parties, excited by Englishmen or Frenchmen! And can we expect to escape the vigilant attention of politicians so experienced, so keen-sighted, and so rich? If we convince them that our attachment to neutrality is unchangeable, they will let us alone; but as long as a hope remains, in either power, of seducing us to engage in war on his side and against his enemy, we shall be torn and convulsed by their manœuvers."

"Patriot Letters," 1809; 9 John Adams's Works, 277.

"I have ever deemed it fundamental for the United States never to take an active part in the quarrels of Europe. Their political interests are entirely distinct from ours. Their mutual jealousies, their balance of power, their complicated alliances, their forces and principles of government are all foreign to us. They are nations of eternal war. All their energies are expended in the destruction of the labor, property, lives, of their people. On our part never had a people so favorable a chance of trying the opposite system, of peace and fraternity with mankind, and a direction of all our means and faculties to the purposes of improvement instead of destruction."

Mr. Jefferson to the President, June 11, 1823; 7 Jeff. Works, 287. (See MSS. Monroe Papers.)

For Mr. Jefferson's opinion that the policy of the United States should be non-intervention, see his letter of Oct. 24, 1823, to President Monroe, *infra*, § 57.

"A participation in it" (a congress proposed by Mr. Canning for the settlement of the difficulties between Spain and her colonies) "would not be likely to make converts to our principles, whilst our admission under the wing of England would take from our consequence what it would add to hers. Such an invitation, nevertheless, will be a mark of respect not without a value, and this will be the more enhanced by a polite refusal than by an acceptance, not to mention that the acceptance would be a step leading into a wilderness of politics and a den of conspirators."

Mr. Madison to Mr. Monroe, Dec. 26, 1823, Monroe Papers, Dept. of State.

"Separated as we are from Europe, by the great Atlantic Ocean, we can have no concern in the wars of the European Governments, nor in the causes which produce them. The balance of power between them, into whichever scale it may turn in its various vibrations, cannot affect us. It is the interest of the United States to preserve the most friendly relations with every power, and on conditions fair, equal, and applicable to all. But in regard to our neighbors our situation is different. It is impossible for the European Governments to interfere in their concerns, especially in those alluded to, which are vital, without affecting us; indeed, the motive which might induce such interference in the present state of the war between the parties, if a war it may be called, would appear to be equally applicable to us. It is gratifying to know that

some of the powers with whom we enjoy a very friendly intercourse, and to whom these views have been communicated, have appeared to acquiesce in them."

President Monroe's Eighth Annual Message, 1824.

"Compare our situation and the circumstances of that time (that of Washington's farewell address) with those of the present day, and what, from the very words of Washington then, would be his counsels to his countrymen now? Europe has still her set of primary interests with which we have little or no relation. Our distant and detached situation, with reference to Europe, remains the same. But we were then the only independent nation of this hemisphere; and we were surrounded by European colonies, with the greater part of which we had no more intercourse than with the inhabitants of another planet. Those colonies have now been transformed into eight independent nations.

* * * "*America* has a set of primary interests, which have none or a remote relation to Europe; the interference of Europe, therefore, in those concerns, should be spontaneously withheld by her upon the same principles, that we have never interfered with hers; and that if she should interfere, as she may, by measures which have a great and dangerous recoil upon ourselves, we might be called in defense of our own altars and firesides to take an attitude which would cause our neutrality to be respected, and choose peace or war, as our interest, guided by justice, shall counsel."

President J. Q. Adams's Special Message, March 15, 1826.

The Government of the United States scrupulously refrains from taking part in the internal dissensions in foreign states, whether in the Old World or the New.

Mr. Clay, Sec. of State, to Mr. Revenga, Jan. 30, 1828; MSS., For. Leg. Notes

"The President desires that you should not identify yourself with the feelings or objects of either of the contending parties. It is the ancient and well-settled policy of this Government not to interfere with the internal concerns of any foreign country. However deeply the President might regret changes in the governments of the neighboring American States, which he might deem inconsistent with those free and liberal principles which lie at the foundation of our own, he would not, on that account, advise or countenance a departure from this policy."

Mr. Van Buren, Sec. of State, to Mr. Moore, June 9, 1829; MSS. Inst., Am. States.

"An invariable and strict neutrality between belligerents and an entire abstinence from all interference in the concerns of other nations, are cardinal traits of the foreign policy of this Government. The obligatory character of this policy is regarded by its constituents with a de-

gree of reverence and submission but little, if anything, short of that which is entertained for the Constitution itself. To enable it to preserve the one, we have penal laws which subject to the severest punishment all attempts, within the scope of their authority, to aid or abet either party in a war prosecuted between foreign nations with which the United States are at peace; and it is made a standing instruction to our ministers abroad to observe the other with scrupulous fidelity."

Mr. Van Buren, Sec. of State, to Mr. Butler, Oct. 16, 1829; MSS. Inst., Am. States.

"One of the settled principles of this Government is that of non-interference in the domestic concerns of nations; and as it would not tolerate it in others, so must every act of its own functionaries, which might be construed into a departure from this principle, incur the decided disapprobation of the President."

Mr. Van Buren, Sec. of State, to Mr. Hamm, Oct. 15, 1830; MSS. Inst., Am. States.

"By no country or persons have these invaluable principles of international law—principles, the strict observance of which is so indispensable to the preservation of social order in the world—been more earnestly cherished or sacredly respected than by those great and good men, who first declared, and finally established, the independence of our own country. They promulgated and maintained them at an early and critical period in our history; they were subsequently embodied in legislative enactments of highly penal character, the faithful enforcement of which has hitherto been, and will, I trust, always continue to be, regarded as a duty inseparably associated with the maintenance of our national honor. That the people of the United States should feel an interest in the spread of political institutions as free as they regard their own to be, is natural; nor can a sincere solicitude for the success of all those who are, at any time, in good faith struggling for their acquisition, be imputed to our citizens as a crime. With the entire freedom of opinion, and an undisguised expression thereof, on their part, the Government has neither the right, nor, I trust, the disposition, to interfere. But whether the interest or the honor of the United States requires that they should be made a party to any such struggle, and, by inevitable consequence, to the war which is waged in its support, is a question which, by our Constitution, is wisely left to Congress alone to decide. It is, by the laws, already made criminal in our citizens to embarrass or anticipate that decision by unauthorized military operations on their part."

President Van Buren's Second Annual Message, 1838. (See discussion in 2 Benton's Thirty Years in the Senate, 276.)

In the adoption (in 1834–'35) by the new South American States of their commercial policy, "the United States, consistent throughout

in the disinterestedness of their conduct towards them (the South American States) desire no preference. But they know too well what is due to themselves to be satisfied if a preference be granted to others."

Mr. Forsyth, Sec. of State, to Mr. Butler, Nov. 11, 1834; MSS. Inst., Mex.

"The great communities of the world are regarded as wholly independent, each entitled to maintain its own system of law and government, while all in their mutual intercourse are understood to submit to the established rules and principles governing such intercourse. And the perfecting of this system of communication among nations, requires the strictest application to the doctrine of non-intervention of any with the domestic concerns of others."

Mr. Webster, Sec. of State, to Mr. Everett, Jan. 29, 1842; MSS. Inst., Great Britain.

For message of President Tyler of Jan. 9, 1843, in reference to Quintuple Alliance for the suppression of the Slave Trade, see MSS. Rep. Book, Dep. of State, vol. 6.

"In proclaiming and adhering to the doctrine of neutrality and non-intervention, the United States have not followed the lead of other civilized nations; they have taken the lead themselves, and have been followed by others.

"Friendly relations with all, but entangling alliances with none, has long been a maxim with us. Our true mission is not to propagate our opinions or impose upon other countries our form of government by artifice or force, but to teach by example and show by our success, moderation and justice, the blessings of self-government and the advantages of free institutions. Let every people choose for itself, and make and alter its political institutions to suit its own condition and convenience. But while we avow and maintain this neutral policy ourselves, we are anxious to see the same forbearance on the part of other nations, whose forms of government are different from our own. The deep interest which we feel in the spread of liberal principles and the establishment of free governments, and the sympathy with which we witness every struggle against oppression, forbid that we should be indifferent to those in which the strong arm of a foreign power is invoked to stifle public sentiment and repress the spirit of freedom in any country."

President Fillmore's Second Annual Message, 1851 (Mr. Webster, Sec. of State).

For Mr. Webster's Hülsemann Letter, Dec. 21, 1850, in which intervention is generally discussed, see *infra*, § 47.

For Mr. Everett's discussion of the question in his note to Mr. Crampton, of Dec. 1, 1852, see *infra*, § 72.

"Before this reaches you, the election in France will be over; and if, as is probable, a decided majority of the people should be found to support the President, the course of duty for you will become plain. From

President Washington's time, down to the present day, it has been a principle always acknowledged by the United States that every nation possesses a right to govern itself according to its own will, to change its institutions at discretion, and to transact its business through whatever agents it may think proper to employ. This cardinal point in our policy has been strongly illustrated by recognizing the many forms of political power which have been successively adopted in France in the series of revolutions with which that country has been visited. Throughout all these changes the Government of the United States has conducted itself in strict conformity to the original principles adopted by Washington, and made known to our diplomatic agents abroad, and to the nations of the world, by Mr. Jefferson's letter to Gouverneur Morris, of the 12th of March, 1793; and if the French people have now, substantially, made another change, we have no choice but to acknowledge that also; and as the diplomatic representative of your country in France, you will act as your predecessors have acted and conform to what appears to be settled national authority. And, while we deeply regret the overthrow of popular institutions, yet our ancient ally has still our good wishes for her prosperity and happiness, and we are bound to leave to her the choice of means for the promotion of those ends."

Mr. Webster, Sec. of State, to Mr. Rives, Jan. 12, 1852; MSS. Inst., France. As to recognition of changes in foreign governments, see *infra*, §§ 69, 70.

"Among the oldest traditions of the Federal Government is an aversion to political alliances with European powers. In his memorable farewell address, President Washington says: 'The great rule of conduct for us, in regard to foreign relations, is, in extending our commercial relations, to have with them as little political connection as possible. So far as we have already formed engagements, let them be fulfilled with perfect good faith. Here let us stop.' President Jefferson, in his inaugural address, in 1801, warned the country against 'entangling alliances.' This expression, now become proverbial, was unquestionably used by Mr. Jefferson, in reference to the alliance with France in 1778, an alliance at that time of incalculable benefit to the United States, but which in less than twenty years came near involving us in the wars of the French Revolution, and laid the foundation of heavy claims upon Congress, not extinguished to the present day. It is a significant coincidence that the particular provision of the alliance which occasioned these evils was that under which France called upon us to aid her in defending her West Indian possessions against England. Nothing less than the unbounded influence of Washington rescued the Union from the perils of that crisis and preserved our neutrality."

Mr. Everett, Sec. of State, to Mr. Sartiges, Dec. 1, 1852; MSS. Notes France; quoted in full, *infra* § 72.

"Your dispatch No. 174 of the 25th of November was received yesterday. It announces the result of the appeal to the people of France, on the subject of the restoration of the Empire, as far as the returns of the votes had come in. That event has already no doubt been consummated and the Empire formally proclaimed. This change will of course in no degree affect the friendly relations between the United States and France. A deep interest was felt by the Government and people of this country in those events of February, 1848, which for a while promised to assimilate the institutions of France with our own. But it is the fundamental law of the American Republic, that the will of the people constitutionally expressed is the ultimate principle of government, and it seems quite evident that the people of France have with a near approach to unanimity desired the restoration of the Empire."

Mr. Everett, Sec. of State, to Mr. Rives, Dec. 17, 1852; MSS. Inst., France.

"The first duty of a foreign minister is to maintain and practice in behalf of his Government good faith and friendship towards the Government to which he is accredited. It is not easy to conceive any case in which a minister could rightfully intervene and give aid or countenance to an insurrectionary movement in derogation of the sovereign to which he is accredited. Doubtlessly there are revolutions which deserve the sympathies and favor of all civilized states, but even in such cases the representatives of foreign Governments should act by their direction and make their protests direct and explicit, taking the responsibilities of the termination of diplomatic intercourse. No such circumstances are known to us as existing in regard to the revolution in New Granada."

Mr. Seward, Sec. of State, to Mr. Burton, July 18, 1861; MSS. Inst., Colombia.

A guarantee of sovereignty to South American States is inconsistent with the policy of the United States.

Mr. Seward, Sec. of State, to Mr. Riotte, July 7, 1862; MSS. Inst., Am. St.

"This Government has not now, it seldom has had, any special transaction, either commercial or political, to engage the attention of a minister at Rome. Indeed, until a very late period the United States were without any representation at that ancient and interesting capital. The first colonists in this country were chiefly Protestants, who not merely recognized no ecclesiastical authority of the Pope, but were very jealous lest he might exert some ecclesiastical influence here which would be followed by an assumption of political power unfavorable to freedom and self-government on this continent. It was not seen that the political power of the Catholic Church was a purely foreign affair, constituting an important part of the political system of the European continent. The opening of our country as an asylum to men of all religions, as well as of all races, and an extension of the trade of the Union, in a short

time brought with them large masses of the faithful members of that church of various birth and derivation, and these masses are continually augmenting. Our country has not been slow to learn that while religion is with these masses, as it is with others, a matter of conscience, and while the spiritual authority of the head of their church is a cardinal article of their faith, which must be tolerated on the soundest principles of civil liberty, yet that this faith in no degree necessarily interferes with the equal rights of the citizen, or affects unfavorably his loyalty to the Republic. It is believed that ever since the tide of emigration set in upon this continent the head of the Roman church and states has freely recognized and favored the development of this principle of political freedom on the part of the Catholics in this country, while he has never lost an opportunity to express his satisfaction with the growth, prosperity, and progress of the American people. It was under these circumstances that this Government, in 1848, wisely determined that while it maintained representatives in the capitals of every other civilized state, and even at the capitals of many semi-civilized states which reject the Christian religion, it was neither wise nor necessary to exclude Rome from the circle of our diplomatic intercourse. Thus far the new relation then established has proved pleasant and beneficent.

"Just now Rome is the seat of profound ecclesiastical and political anxieties, which, more or less, affect all the nations of Europe. The Holy Father claims immunity for the temporal power he exercises, as a right incident to an ecclesiastical authority which is generally respected by the European states.

"On the other hand, some of those states, with large masses in other states, assert that this temporal power is without any religious sanction, is unnecessary and pernicious. I have stated the question merely for the purpose of enabling myself to give you the President's views of what will be your duty with regard to it. That duty is to forbear altogether from taking any part in the controversy. The reasons for this forbearance are three: First, that so far as spiritual or ecclesiastical matters enter into the question they are beyond your province, for you are a political representative only. Second, so far as it is a question affecting the Roman states, it is a domestic one, and we are a foreign nation. Third, so far as it is a political question merely, it is at the same time purely an European one, and you are an American minister, bound to avoid all entangling connection with the politics of that continent.

"This line of conduct will nevertheless allow you to express, and you are therefore instructed to express, to His Holiness the assurances of the best wishes of the Government and of the people of the United States for his health and happiness, and for the safety and prosperity and happiness of the Roman people."

Mr. Seward, Sec. of State, to Mr. Blatchford, Sept. 27, 1862; MSS. Inst., Papal States; Dip. Corr., 1862.

"This Government acts directly and sincerely in its intercourse with foreign nations, and no less directly and sincerely with New Granada than with all others. It regards the government of each state as its head until that government is effectually displaced by the substitution of another. It abstains from any interference with its domestic affairs in foreign countries, and it holds no unnecessary communication, secret or otherwise, with revolutionary parties or factions therein. It neither seeks to prevent social or political reforms in such countries nor lends its aid to reforms of them rightfully of which it has neither the authority nor the means to judge."

Mr. Seward, Sec. of State, to Mr. Burton, Oct. 25, 1862; MSS. Inst., Colombia.

"Mr. Mercier has read to me, and at my request has left with me, a copy of an instruction under the date of the 23d of April last, which he has received from Mr. Drouyn de l'Huys, and which relates to exciting and interesting events in Poland that are now engaging the serious attention of the principal states in Western Europe.

"Mr. Mercier has, at the same time, favored me with a copy of an instruction relating to the same events which has been transmitted by Mr. Drouyn de l'Huys to the embassador of France at St. Petersburg.

"We learn from the first of these papers that the proceeding which has thus been adopted at Paris with a view to the exercise of a moral influence with the Emperor of Russia, has received the approbation and concurrence of the court of Vienna and the cabinet at London, and that the Emperor of the French, justly appreciating at one and the same time our historical sympathy with the Poles, and our ancient friendship with Russia, would be gratified with a co-operation in that important proceeding by the Government of the United States.

"Having taken the instructions of the President, I am now to communicate our views upon the subject, for the information of Mr. Drouyn de l'Huys.

"This Government is profoundly and agreeably impressed with the consideration which the Emperor has manifested towards the United States by inviting their concurrence in a proceeding having for its object the double interests of public order and humanity. Nor is it less favorably impressed with the sentiments and the prudential considerations which the Emperor has in so becoming a manner expressed to the court of St. Petersburg. They are such only as appeal to the just emotions and best sympathies of mankind. The enlightened and humane character of the Emperor of Russia, so recently illustrated by the enfranchisement of a large mass of the Russian people from inherited bondage, and the establishment of an impartial and effective administration of justice throughout his dominions, warrant a belief that the appeal will be received and responded to by him with all the favor that is consistent with the general welfare of the great state over which he presides with such eminent wisdom and moderation.

"Notwithstanding, however, the favor with which we thus regard the suggestion of the Emperor of the French, this Government finds an insurmountable difficulty in the way of any active co-operation with the Governments of France, Austria, and Great Britain, to which it is thus invited.

"Founding our institutions upon the basis of the rights of man, the builders of our Republic came all at once to be regarded as political reformers, and it soon became manifest that revolutionists in every country hailed them in that character, and looked to the United States for effective sympathy, if not for active support and patronage. Our invaluable Constitution had hardly been established when it became necessary for the Government of the United States to consider to what extent we could, with propriety, safety, and beneficence, intervene, either by alliance or concerted action with friendly powers or otherwise, in the political affairs of foreign states. An urgent appeal for such aid and sympathy was made in behalf of France, and the appeal was sanctioned and enforced by the treaty then existing of mutual alliance and defense, a treaty without which it may even now be confessed, to the honor of France, our own sovereignty and independence could not have been so early secured. So deeply did this appeal touch the heart of the American people that only the deference they cherished to the counsels of the Father of our Country, who then was at the fullness of his unapproachable moral greatness, reconciled them to the stern decision that, in view of the location of this Republic, the characters, habits, and sentiments of its constituent parts, and especially its complex yet unique and very popular Constitution, the American people must be content to recommend the cause of human progress by the wisdom with which they should exercise the powers of self-government, forbearing at all times, and in every way, from foreign alliances, intervention, and interference.

"It is true that Washington thought a time might come when, our institutions being firmly consolidated and working with complete success, we might safely and perhaps beneficially take part in the consultations held by foreign states for the common advantage of the nations. Since that period occasions have frequently happened which presented seductions to a departure from what, superficially viewed, seemed a course of isolation and indifference. It is scarcely necessary to recur to them. One was an invitation to a congress of newly emancipated Spanish American states; another, an urgent appeal to aid Hungary in a revolution aiming at the restoration of her ancient and illustrious independence; another, the project of a joint guarantee of Cuba to Spain in concurrence with France and Great Britain; and more recently, an invitation to a co-operative demonstration with Spain, France, and Great Britain in Mexico; and, later still, suggestions by some of the Spanish American states for a common council of the republican states situated upon the American continent. These suggestions were suc-

cessively disallowed by the Government, and its decision was approved in each case by the deliberate judgment of the American people. Our policy of non-intervention, straight, absolute, and peculiar as it may seem to other nations, has thus become a traditional one, which could not be abandoned without the most urgent occasion, amounting to a manifest necessity. Certainly it could not be wisely departed from at this moment, when the existence of a local, although as we trust only a transient disturbance, deprives the Government of the counsel of a portion of the American people, to whom so wide a departure from the settled policy of the country must in any case be deeply interesting.

"The President will not allow himself to think for a single moment that the Emperor of the French will see anything but respect and friendship for himself and the people of France, with good wishes for the preservation of peace and order, and the progress of humanity in Europe, in the adherence of the United States on this occasion to the policy which they have thus far pursued with safety, and not without advantage, as they think, to the interests of mankind."

Mr. Seward, Sec. of State, to Mr. Dayton, May 11, 1863; MSS. Inst., France; Dip. Corr., 1863.

See, further, Mr. Seward to Mr. Motley, June 20, July 14, 1863; Dip. Corr., 1863.

"So in regard to our foreign relations, the conviction has universally obtained that the true national policy is one of self-reliance and self-conduct in our domestic affairs, with absolute non-interference in those of other countries. These two important ideas are accepted with practical universality in the loyal States, while in the region covered by the insurrection they are resisted only by those who have staked their all upon the fortunes of a desperate strife.

"Under these circumstances Europe, with her attention already diverted from America, will no longer find provocation or encouragement here for a policy hostile to the settlement of our controversy upon the basis of our constitutional union. I think, moreover, that she cannot be long in discovering that, in lieu of her present partial illicit trade, with its constant annoyances, she has only to revoke her recognition of the insurgents as a belligerent to secure a return of peace with a restoration of the commerce which prevailed before the civil war began. True there will for a season be a difference in the materials of exchange; but one has only to consider the immense forces of population and industry existing in the United States to become satisfied that whenever peace returns, every source of national wealth now closed will soon be made to flow even more freely under the application of labor universally free than it did before while slavery was maintained as a part of the industrial economy of the country.

"Apprehensions that the aggrandizement of the United States as a commercial power can bring any practical inconvenience or danger to European states can disturb none but visionary minds. We can never be dangerous unless we are armed. We were never so great, and yet

never so completely unarmed, as we were when this civil war broke out. We were never before so shorn of national prestige as we are now through the operation of domestic faction; yet we have never before been so strongly armed as we are at this moment upon land and water. If we have ever been aggressive, it was the interest of slavery that made us belligerent abroad, as it was the same interest that has now afflicted ourselves with civil war. We can be only a peaceful nation if we are left to enjoy our independence in the way that our destiny leads us. We can only become a disturber of the world's peace by being called into the world to defend that independence."

Mr. Seward, Sec. of State, to Mr. Adams, Nov. 30, 1863; MSS. Inst. Gr. Brit.; Dip. Corr., 1863.

"Within the last three years it has seen an attempt at revolution in the ancient Kingdom of Poland, a successful revolution in what was New Granada, but now is Colombia, a war between France and Mexico, a civil war in Venezuela, a war between three allied Spanish-American Republics and Salvador, and a war between Colombia and Ecuador. It now sees a probability of a war between Denmark and Germany. In regard to such of these conflicts as have actually occurred, the United States have pursued the same policy, attended by the same measure of reserve, that they have thus far followed, in regard to the civil war in Santo Domingo. It is by this policy that the United States equally avoid throwing themselves across the way of human progress, or lending encouragement to factious revolutions. Pursuing this course, the United States leave to the government and people of every foreign state the exclusive settlement of their own affairs and the exclusive enjoyment of their own institutions. Whatever may be thought by other nations of this policy, it seems to the undersigned to be in strict conformity with those prudential principles of international law—that nations are equal in their independence and sovereignty, and that each individual state is bound to do unto all other states just what it reasonably expects those states to do unto itself."

Mr. Seward, Sec. of State, to Mr. Tassara, Feb. 3, 1864; MSS. Notes Spain.

As to keeping aloof from foreign interests, see 9 John Adams's Works, 108, 109, 118, 129, 136, 202, 277, 450, 579, 277–8.

As to non-intervention generally see 3 John Adams's Works, 316; 7 *id.*, 151; 8 *id.*, 9, 178; (and see also discussions in 103 N. Am. Rev., 476, October, 1866).

As to intervention in respect to specific foreign states, see *infra*, §§ 58 *ff.*

As to special mission in reference to claims of Costa Rica on Nicaragua, see Mr. Cass, Sec. of State, to Mr. Jones, July 30, 1857; MSS. Inst. Special Missions.

As to non-intervention in South America, see *supra*, §§ 57 *ff.*

The subject of territorial sovereignty is discussed *supra*, §§ 1 *ff.*

"The President wishes in no manner to dictate or make any authoritative utterance to either Peru or Chili as to the merits of the controversy existing between those republics, as to what indemnity should be asked

or given, as to a change of boundaries, or as to the personnel of the Government of Peru. The President recognizes Peru and Chili to be independent republics, to which he has no right or inclination to dictate.

"Were the United States to assume an attitude of dictation towards the South American republics, even for the purpose of preventing war, the greatest of evils, or to preserve the autonomy of nations, it must be prepared by army and navy to enforce its mandate, and to this end tax our people for the exclusive benefit of foreign nations.

"The President's policy with the South American republics and other foreign nations is that expressed in the immortal address of Washington, with which you are entirely familiar. What the President does seek to do, is to extend the kindly offices of the United States impartially to both Peru and Chili, whose hostile attitude to each other he seriously laments; and he considers himself fortunate in having one so competent as yourself to bring the powers of reason and persuasion to bear in seeking the termination of the unhappy controversy; and you will consider as revoked that portion of your original instruction which directs you on the contingency therein stated as follows:

"You will say to the Chilian Government that the President considers such a proceeding as an intentional and unwarranted offense, and that you will communicate such an avowal to the Government of the United States with the assurance that it will be regarded by the Government as an act of such unfriendly import as to require the immediate suspension of all diplomatic intercourse. You will imform me immediately of the happening of such a contingency, and instructions will be sent you.

"Believing that a prolific cause of contention between nations is an irritability which is too readily offended, the President prefers that he shall himself determine after report has been made to him whether there is or is not cause for offense.

"It is also the President's wish that you do not visit (although indicated in your original instruction you should do so), as the envoy of this government, the Atlantic republics after leaving Chili.

"The United States is at peace with all the nations of the earth, and the President wishes hereafter to determine whether it will conduce to that general peace, which he would cherish and promote, for this government to enter into negotiations and consultation for the promotion of peace with selected friendly nationalities without extending a like confidence to other peoples with whom the United States is on equally friendly terms.

"If such partial confidence would create jealousy and ill-will, peace, the object sought by such consultation, would not be promoted."

Mr. Frelinghuysen, Sec. of State, to Mr. Trescot, Jan. 9, 1882; MSS. Inst., Chili; For. Rel., 1882; Doc. attached to Pres. Mess. of Jan. 26 and 27, 1882.

Mr. Senior, in an article in 77 Edinburgh Review, 334 (1843), distinguishes between intervention by one or more states for the purpose of maintaining the balance of power, and intervention to interfere with the political affairs of another country: "The first is the privilege of the weak

against the strong; the second, that of the strong against the weak. The circumstances that give rise to the first are tolerably definite and must always be evident. Those which create the second are incapable of definition, and generally incapable of proof. If we examine the statements of evils suffered or apprehended from the domestic affairs of independent nations, on which the most remarkable modern interventions have been founded, we shall find them in general too vague to be susceptible of refutation or too frivolous to deserve it." In this article the general policy of intervention is discussed with much care. But the position that intervention to preserve the balance of power is proper is now generally abandoned by publicists.

It is further stated by Mr. Senior (77 Edin. Rev., 358) that the British Government in refusing to accede to the declaration of the Holy Alliance in 1818, "denied that any general right of interference against revolutionary movements in independent states was sanctioned by the law of nations, or could be made prospectively the basis of an alliance. Admitting the right of a state to interfere where its own immediate security or essential interests were seriously endangered by the internal transactions of another state, they declared this right to be an exception to general principles of the greatest value; to be capable of arising only out of the circumstances of each special case; to be justified only by the strongest necessity, and to be limited and regulated thereby; and to be insusceptible of being so far reduced to rule as to be incorporated into the ordinary diplomacy of states, or into the institutes of the law of nations."

See British Circular, Jan. 19, 1821; State Papers, 1820–'21, p. 1160.

"The main difficulty connected with intervention is the following: It may be admitted that there are possibilities of tyrannical usage, barbarous practices, or persistent and hopeless anarchy, out of which the friendly aid of a generous, impartial, and truly disinterested by-stander, may be the only way to a deliverance. But two cautions have to be observed: first, it has to be provided that the aid is accorded at a time and under circumstances which do not in any way prejudge the issue of a struggle yet undetermined, and which ought, in the interests of the state concerned, to be decided by the real and internal and not by the factitious and external elements of victory. The importance of this consideration was signally illustrated in the late insurrection of the Southern States of the American Union, and in the controversy that long hung round the questions whether England had chosen the proper moment for according to the Southern Confederacy the rights of a belligerent state, and what was the meaning of recognition for belligerent purposes."

Amos, Remedies for War (N. Y., ed. 1880), 61.

"A second caution in respect to intervention is that, admitting the propriety and duty of intervention in certain extreme crises, it is always open to a state, influential, designing, and unscrupulous, to foster in another state, subject to its moral control, the very condition of things which will, sooner or later, bring about a fit opportunity for its own overt interference. Whether Russia was guilty of this conduct in the case of the late Servian war and the Herzegovinian insurrection, is of less importance here than the fact that she was constantly reproached with it. It is a danger which is almost inherent in the doctrine of a right of intervention in certain emergencies."

Ibid.

I. *EXCEPTIONS.*

(1) RELIEF AND PROTECTION OF CITIZENS ABROAD.

§ 46.

Illustrations of interventions of this class will be found in subsequent sections. (*Infra* §§ 189, 215.) This exception applies not merely to citizens of the United States, but to persons domiciled in the United States.

The rule is that wherever a person of either of these classes claims when abroad the protection of the Department, or redress in case of injury, the Secretary, on affidavits showing the nature of the danger or wrong, will instruct the minister, in the country from which the danger or wrong proceeds, to ask explanation, and in case of the danger or wrong being proved, to insist on relief or redress. (See *infra*, §§ 189, 213.)

(2) AGENCIES TO OBTAIN INFORMATION AS TO PENDING INSURRECTION.

§ 47.

In 1816, when the acknowledgment of the independence of the South American colonies was under consideration, Mr. Monroe sent three commissioners, Cæsar A. Rodney, Theoderick Bland, and John Graham, in a ship-of-war, to visit the several colonies, inquire into the condition of things in respect to the probability of endurance of successful hostilities, and then report. These commissioners were not nominated to the Senate, though that body was in session when they sailed, but went exclusively on the President's nomination. Their expenses were not paid out of the contingent fund, but were met by a subsequent appropriation of $30,000 by Congress.

See 3 Schouler's Hist. U. S., 28 *ff*; President Monroe's First Annual Message, 1817; Mr. Adams, Sec. of State, to Mr. Hyde de Neuville, July 27, 1818; MSS. For. Leg. Notes. As to appointment and pay of such agents, see *infra*, § 78.

"During the late conflict between Austria and Hungary, there seemed to be a prospect that the latter might become an independent nation. However faint that prospect at the time appeared, I thought it my duty, in accordance with the general sentiment of the American people, who deeply sympathized with the Magyar patriots, to stand prepared, upon the contingency of the establishment by her of a permanent government, to be the first to welcome independent Hungary into the family of nations. For this purpose, I invested an agent, then in Europe, with power to declare our willingness promptly to recognize her independence in the event of her ability to sustain it. The powerful intervention

of Russia in the contest extinguished the hopes of the struggling Magyars. The United States did not, at any time, interfere in the contest; but the feelings of the nation were strongly enlisted in the cause, and by the sufferings of a brave people, who had made a gallant though unsuccessful effort to be free."

President Taylor's First Annual Message, 1849. The instructions to Mr. Mann are given in part *infra* § 70. (See comments in 1 Lawrence Com. sur Droit Int., 201.)

Mr. Abdy (Abdy's Kent, 1878, 92), after speaking with high approval of the conduct of the United States in delaying recognition of the independence of the South American states, and of Texas, until such independence was practically established, quotes the passage from President Taylor's first annual message above cited, and then proceeds to say:

"Is it necessary to criticise a document in which two faults are at all events visible, the delegacy of sovereign powers to an agent, and its victory of sympathy and sentiment over reason and law. What would have been thought of an English minister who should have directed an agent in the Confederate States to declare the willingness of England promptly to recognize their independence, in the event of their ability to maintain it?"

"The undersigned, Secretary of State of the United States, had the honor to receive some time ago the note of Mr. Hülsemann, chargé d'affaires of His Majesty the Emperor of Austria, of the 30th September. Causes not arising from any want of personal regard for Mr. Hülsemann or of proper respect for his Government have delayed an answer until the present moment. Having submitted Mr. Hülsemann's letter to the President, the undersigned is now directed by him to return the following reply:

"The objects of Mr. Hülsemann's note are, first, to protest, by order of his Government, against the steps taken by the late President of the United States to ascertain the progress and probable result of the revolutionary movements in Hungary; and, secondly, to complain of some expressions in the instructions of the late Secretary of State to Mr. A. Dudley Mann, a confidential agent of the United States, as communicated by President Taylor to the Senate on the 28th of March last.

"The principal ground of protest is founded on the idea or in the allegation that the Government of the United States, by the mission of Mr. Mann and his instructions, has interfered in the domestic affairs of Austria in a manner unjust or disrespectful toward that power. The President's message was a communication made by him to the Senate, transmitting a correspondence between the Executive Government and a confidential agent of its own. This would seem to be itself a domestic transaction—a mere instance of intercourse between the President and the Senate in the manner which is usual and indispensable in communications between the different branches of the Government. It was not addressed either to Austria or Hungary, nor was it any public mani-

festo to which any foreign state was called on to reply. It was an account of its transactions communicated by the Executive Government to the Senate at the request of that body—made public, indeed, but made public only because such is the common and usual course of proceeding—and it may be regarded as somewhat strange, therefore, that the Austrian cabinet did not perceive that, by the instructions given to Mr. Hülsemann, it was itself interfering with the domestic concerns of a foreign state, the very thing which is the ground of its complaint against the United States. (See *infra*, § 79.)

"This Department has on former occasions informed the ministers of foreign powers that a communication from the President to either house of Congress is regarded as a domestic communication, of which, ordinarily, no foreign state has cognizance, and in more recent instances the great inconvenience of making such communications subjects of diplomatic correspondence and discussion has been fully shown. If it had been the pleasure of His Majesty the Emperor of Austria during the struggles in Hungary to have admonished the provisional Government or the people of that country against involving themselves in disaster by following the evil and dangerous example of the United States of America in making efforts for the establishment of independent governments, such an admonition from that sovereign to his Hungarian subjects would not have originated here a diplomatic correspondence. The President might, perhaps, on this ground have declined to direct any particular reply to Mr. Hülsemann's note; but out of proper respect for the Austrian Government it has been thought better to answer that note at length, and the more especially as the occasion is not unfavorable for the expression of the general sentiments of the Government of the United States upon the topics which that note discusses.

"A leading subject in Mr. Hülsemann's note is that of the correspondence between Mr. Hülsemann and the predecessor of the undersigned, in which Mr. Clayton, by direction of the President, informed Mr. Hülsemann 'that Mr. Mann's mission had no other object in view than to obtain reliable information as to the true state of affairs in Hungary by personal observation.' Mr. Hülsemann remarks that 'this explanation can hardly be admitted, for it says very little as to the cause of the anxiety which was felt to ascertain the chances of the revolutionists.' As this, however, is the only purpose which can, with any appearance of truth, be attributed to the agency, as nothing whatever is alleged by Mr. Hülsemann to have been either done or said by the agent inconsistent with such an object, the undersigned conceives that Mr. Clayton's explanation ought to be deemed not only admissible, but quite satisfactory. Mr. Hülsemann states in the course of his note that his instructions to address his present communication to Mr. Clayton reached Washington about the time of the lamented death of the late

President, and that he delayed from a sense of propriety the execution of his task until the new Administration should be fully organized, 'a delay which he now rejoices at, as it has given him the opportunity of ascertaining from the new President himself, on the occasion of the reception of the diplomatic corps, that the fundamental policy of the United States, so frequently proclaimed, would guide the relations of the American Government with other powers.' Mr. Hülsemann also observes that it is in his power to assure the undersigned 'that the Imperial Government is disposed to cultivate relations of friendship and good understanding with the United States.' The President receives this assurance of the disposition of the Imperial Government with great satisfaction, and, in consideration of the friendly relations of the two Governments thus mutually recognized, and of the peculiar nature of the incidents by which their good understanding is supposed by Mr. Hülsemann to have been, for a moment, disturbed or endangered, the President regrets that Mr. Hülsemann did not feel himself at liberty wholly to forbear from the execution of instructions, which were of course transmitted from Vienna without any foresight of the state of things under which they would reach Washington. If Mr. Hülsemann saw in the address of the President to the diplomatic corps, satisfactory pledges of the sentiments and the policy of this Government, in regard to neutral rights and neutral duties, it might, perhaps, have been better not to bring on a discussion of past transactions. But the undersigned readily admits that this was a question fit only for the consideration and decision of Mr. Hülsemann himself; and although the President does not see that any good purpose can be answered by reopening the inquiry into the propriety of the steps taken by President Taylor, to ascertain the probable issue of the late civil war in Hungary, justice to his memory requires the undersigned briefly to restate the history of those steps, and to show their consistency with the neutral policy which has invariably guided the Government of the United States in its foreign relations, as well as with the established and well-settled principles of national intercourse, and the doctrines of public law.

"The undersigned will first observe that the President is persuaded His Majesty the Emperor of Austria does not think that the Government of the United States ought to view, with unconcern, the extraordinary events which have occurred, not only in his dominions, but in many other parts of Europe, since February, 1848. The Government and people of the United States, like other intelligent Governments and communities, take a lively interest in the movements and the events of this remarkable age, in whatever part of the world they may be exhibited. But the interest taken by the United States in those events has not proceeded from any disposition to depart from that neutrality toward foreign powers which is among the deepest principles and the most cherished traditions of the political history of the Union. It has been the necessary effect of the unexampled character of the events

themselves, which could not fail to arrest the attention of the contemporary world, as they will doubtless fill a memorable page in history. But the undersigned goes further, and freely admits that in proportion as these extraordinary events appeared to have their origin in those great ideas of responsible and popular governments, on which the American constitutions themselves are wholly founded, they could not but command the warm sympathy of the people of this country.

"Well known circumstances in their history, indeed their whole history, have made them the representatives of purely popular principles of government. In this light they now stand before the world. They could not, if they would, conceal their character, their condition, or their destiny. They could not, if they so desired, shut out from the view of mankind the causes which have placed them, in so short a national career, in the station which they now hold among the civilized states of the world. They could not, if they desired it, suppress either the thoughts or the hopes which arise in men's minds, in other countries, from contemplating their successful example of free government. That very intelligent and distinguished personage, the Emperor Joseph the Second, was among the first to discern this necessary consequence of the American Revolution on the sentiments and opinions of the people of Europe. In a letter to his minister in The Netherlands in 1787, he observes that 'it is remarkable that France, by the assistance which she afforded to the Americans, gave birth to reflections on freedom.' This fact, which the sagacity of that monarch perceived at so early a day, is now known and admitted by intelligent powers all over the world. True, indeed, it is, that the prevalence on the other continent of sentiments favorable to republican liberty, is the result of the reaction of America upon Europe; and the source and center of this reaction has doubtless been, and now is, in these United States. The position thus belonging to the United States is a fact as inseparable from their history, their constitutional organization, and their character, as the opposite position of the powers composing the European alliance is from the history and constitutional organization of the Government of those powers. The sovereigns who form that alliance have not unfrequently felt it their right to interfere with the political movements of foreign states; and have, in their manifestoes and declarations, denounced the popular ideas of the age in terms so comprehensive as of necessity to include the United States, and their forms of government. It is well known that one of the leading principles announced by the allied sovereigns, after the restoration of the Bourbons, is, that all popular or constitutional rights are holden no otherwise than as grants and indulgences from crowned heads. 'Useful and necessary changes in legislation and administration,' says the Laybach Circular of May, 1841, 'ought only to emanate from the free will and intelligent conviction of those whom God has rendered responsible for power; all that deviates from this line necessarily leads to disorder, commotions, and evils

far more insufferable than those which they pretend to remedy.' And his late Austrian Majesty, Francis I, is reported to have declared in an address to the Hungarian Diet, in 1820, that 'the whole world had become foolish, and, leaving their ancient laws, was in search of imaginary constitutions.' These declarations amount to nothing less than a denial of the lawfulness of the origin of the Government of the United States, since it is certain that that Government was established in consequence of a change which did not proceed from thrones, or the permission of crowned heads. But the Government of the United States heard these denunciations of its fundamental principles without remonstrance, or the disturbance of its equanimity. This was thirty years ago.

"The power of this Republic, at the present moment, is spread over a region, one of the richest and most fertile on the globe, and of an extent in comparison with which the possessions of the house of Hapsburg are but as a patch on the earth's surface. Its population, already 25,000,000, will exceed that of the Austrian Empire within the period during which it may be hoped that M. Hülsemann may yet remain in the honorable discharge of his duties to his Government. Its navigation and commerce are hardly exceeded by the oldest and most commercial nations; its maritime means and its maritime power may be seen by Austria herself, in all seas where she has ports, as well as it may be seen, also, in all other quarters of the globe. Life, liberty, property, and all personal rights are amply secured to all citizens, and protected by just and stable laws; and credit, public and private, is as well established as in any Government of continental Europe. And the country, in all its interests and concerns, partakes most largely in all the improvements and progress which distinguish the age. Certainly, the United States may be pardoned, even by those who profess adherence to the principles of absolute Governments, if they entertain an ardent affection for those popular forms of political organization which have so rapidly advanced their own prosperity and happiness, and enabled them, in so short a period, to bring their country and the hemisphere to which it belongs, to the notice and respectful regard, not to say the admiration, of the civilized world. Nevertheless, the United States have abstained, at all times, from acts of interference with the political changes of Europe. They cannot, however, fail to cherish always a lively interest in the fortunes of nations struggling for institutions like their own. But this sympathy, so far from being necessarily a hostile feeling toward any of the parties to these great national struggles, is quite consistent with amicable relations with them all. The Hungarian people are three or four times as numerous as the inhabitants of these United States were when the American Revolution broke out. They possess, in a distinct language, and in other respects, important elements of a separate nationality, which the Anglo-Saxon race in this country did not possess; and if the United States wish success to coun-

tries contending for popular constitutions and national independence, it is only because they regard such constitutions and such national independence, not as imaginary, but as real blessings. They claim no right, however, to take part in the struggles of foreign powers in order to promote these ends. It is only in defense of his own Government, and its principles and character, that the undersigned has now expressed himself on this subject. But when the United States behold the people of foreign countries without any such interference, spontaneously moving toward the adoption of institutions like their own, it surely cannot be expected of them to remain wholly indifferent spectators.

"In regard to the recent very important occurrences in the Austrian Empire, the undersigned freely admits the difficulty which exists in this country, and is alluded to by Mr. Hülsemann, of obtaining accurate information. But this difficulty is by no means to the ascribed to what Mr. Hülsemann calls—with little justice, as it seems to the undersigned—'the mendacious rumors propagated by the American press.' For information on this subject, and others of the same kind, the American press is, of necessity, almost wholly dependent upon that of Europe; and if 'mendacious rumors' respecting Austrian and Hungarian affairs have been anywhere propagated, that propagation of falsehoods has been most prolific on the European continent, and in countries immediately bordering on the Austrian Empire. But, wherever these errors may have originated, they certainly justified the late President in seeking true information through authentic channels. His attention was, first, particularly drawn to the state of things in Hungary, by the correspondence of Mr. Stiles, chargé d'affaires of the United States at Vienna. In the autumn of 1848, an application was made to this gentleman, on behalf of Mr. Kossuth, formerly minister of finance for the Kingdom of Hungary by Imperial appointment, but at the time the application was made chief of the revolutionary Government. The object of this application was to obtain the good offices of Mr. Stiles with the Imperial Government, with a view to the suspension of hostilities. This application became the subject of a conference between Prince Schwarzenberg, the imperial minister for foreign affairs, and Mr. Stiles. The prince commended the considerateness and propriety with which Mr. Stiles had acted; and, so far from disapproving his interference, advised him, in case he received a further communication from the revolutionary Government in Hungary, to have an interview with Prince Windischgrätz, who was charged by the Emperor with the proceedings determined on in relation to that Kingdom. A week after these occurrences, Mr. Stiles received, through a secret channel, a communication signed by L. Kossuth, president of the committee of defense, and countersigned by Francis Pulsky, secretary of state. On the receipt of this communication, Mr. Stiles had an interview with Prince Windischgrätz, 'who received him with the utmost kindness, and thanked him for his efforts toward reconciling the existing difficulties.' Such were the in-

cidents which first drew the attention of the Government of the United States particularly to the affairs of Hungary and the conduct of Mr. Stiles, though acting without instructions in a matter of much delicacy, having been viewed with satisfaction by the Imperial Government, was approved by that of the United States.

"In the course of the year 1848 and in the early part of 1849, a considerable number of Hungarians came to the United States. Among them were individuals representing themselves to be in the confidence of the revolutionary government, and by these persons the President was strongly urged to recognize the existence of that government. In these applications, and in the manner in which they were viewed by the President, there was nothing unusual; still less was there anything unauthorized by the law of nations. It is the right of every independent state to enter into friendly relations with every other independent state. Of course, questions of prudence naturally arise in reference to new states, brought by successful revolutions into the family of nations; but it is not to be required of neutral powers that they should await the recognition of the new government by the parent state. No principle of public law has been more frequently acted upon, within the last thirty years, by the great powers of the world than this. Within that period eight or ten new states have established independent governments within the limits of the colonial dominions of Spain on this continent; and in Europe the same thing has been done by Belgium and Greece. The existence of all these governments was recognized by some of the leading powers of Europe, as well as by the United States, before it was acknowledged by the states from which they had separated themselves. If, therefore, the United States had gone so far as formally to acknowledge the independence of Hungary, although, as the result has proved, it would have been a precipitate step, and one from which no benefit would have resulted to either party, it would not, nevertheless, have been an act against the law of nations, provided they took no part in her contest with Austria. But the United States did no such thing. Not only did they not yield to Hungary any actual countenance or succor; not only did they not show their ships of war in the Adriatic with any menacing or hostile aspect, but they studiously abstained from everything which had not been done in other cases in times past, and contented themselves with instituting an inquiry into the truth and reality of alleged political occurrences. Mr. Hülsemann incorrectly states, unintentionally certainly, the nature of the mission of this agent, when he says that 'a United States agent had been dispatched to Vienna with orders to watch for a favorable moment to recognize the Hungarian republic, and to conclude a treaty of commerce with the same.' This, indeed, would have been a lawful object, but Mr. Mann's errand was, in the first instance, purely one of inquiry. He had no power to act, unless he had first come to the conviction that a firm and stable Hungarian government existed. 'The principal object the

President has in view,' according to his instructions, 'is to obtain minute and reliable information in regard to Hungary in connection with the affairs of adjoining countries, the probable issue of the present revolutionary movements, and the chances we may have of forming commercial arrangements with that power favorable to the United States.' Again, in the same paper, it is said: 'The object of the President is to obtain information in regard to Hungary, and her resources and prospects, with a view to an early recognition of her independence and the formation of commercial relations with her.' It was only in the event that the new government should appear, in the opinion of the agent, to be firm and stable, that the President proposed to recommend its recognition.

"Mr. Hülsemann, in qualifying these steps of President Taylor with the epithet of 'hostile,' seems to take for granted that the inquiry could, in the expectation of the President, have but one result, and that favorable to Hungary. If this were so, it would not change the case. But the American Government sought for nothing but truth; it desired to learn the facts through a reliable channel. It so happened, in the chances and vicissitudes of human affairs, that the result was adverse to the Hungarian revolution. The American agent, as was stated in his instructions to be not unlikely, found the condition of Hungarian affairs less prosperous than it had been, or had been believed to be. He did not enter Hungary, nor hold any direct communication with her revolutionary leaders. He reported against the recognition of her independence, because he found she had been unable to set up a firm and stable government. He carefully forbore, as his instructions required, to give publicity to his mission, and the undersigned supposes that the Austrian Government first learned its existence from the communications of the President to the Senate.

"Mr. Hülsemann will observe from this statement that Mr. Mann's mission was wholly unobjectionable, and strictly within the rule of the law of nations, and the duty of the United States as a neutral power. He will accordingly feel how little foundation there is for his remark, that 'those who did not hesitate to assume the responsibility of sending Mr. Dudley Mann on such an errand, should, independent of considerations of propriety, have borne in mind that they were exposing their emissary to be treated as a spy.' A spy is a person sent by one belligerent to gain secret information of the forces and defenses of the other, to be used for hostile purposes. According to practice, he may use deception, under the penalty of being lawfully hanged if detected. To give this odious name and character to a confidential agent of a neutral power, bearing the commission of his country, and sent for a purpose fully warranted by the law of nations, is not only to abuse language, but also to confound all just ideas, and to announce the wildest and most extravagant notions, such as certainly were not to have been expected in a grave diplomatic paper; and the President directs the

undersigned to say to Mr. Hülsemann that the American Government would regard such an imputation upon it by the cabinet of Austria, as that it employs spies, and that in a quarrel none of its own, as distinctly offensive, if it did not presume, as it is willing to presume, that the word used in the original German was not of equivalent meaning with 'spy' in the English language, or that in some other way the employment of such an opprobrious term may be explained. Had the Imperial Government of Austria subjected Mr. Mann to the treatment of a spy, it would have placed itself without the pale of civilization, and the cabinet of Vienna may be assured that if it had carried, or attempted to carry, any such lawless purpose into effect in the case of an authorized agent of this Government the spirit of the people of this country would have demanded immediate hostilities to be waged by the utmost exertion of the power of the Republic—military and naval.

"Mr. Hülsemann proceeds to remark that 'this extremely painful incident, therefore, might have been passed over without any written evidence being left on our part in the archives of the United States had not General Taylor thought proper to revive the whole subject by communicating to the Senate, in his message of the 18th [28th] of last March, the instructions with which Mr. Mann had been furnished on the occasion of his mission to Vienna. The publicity which has been given to that document has placed the Imperial Government under the necessity of entering a formal protest, through its official representative, against the proceedings of the American Government lest that Government should construe our silence into approbation, or toleration even, of the principles which appear to have guided its action and the means it has adopted.' The undersigned reasserts to Mr. Hülsemann and to the cabinet of Vienna, and in the presence of the world, that the steps taken by President Taylor, now protested against by the Austrian Government, were warranted by the law of nations and agreeable to the usages of civilized states. With respect to the communication of Mr. Mann's instructions to the Senate, and the language in which they are couched, it has already been said—and Mr. Hülsemann must feel the justice of the remark—that these are domestic affairs, in reference to which the Government of the United States cannot admit the slightest responsibility to the Government of His Imperial Majesty. No state deserving the appellation of independent can permit the language in which it may instruct its own officers in the discharge of their duties to itself to be called in question under any pretext by a foreign power; but even if this were not so, Mr. Hülsemann is in an error in stating that the Austrian Government is called an 'iron rule' in Mr. Mann's instructions. That phrase is not found in the paper, and in respect to the honorary epithet bestowed in Mr. Mann's instructions on the late chief of the revolutionary government of Hungary Mr. Hülsemann will bear in mind that the Government of the United States cannot justly be expected, in a confidential communication to its own agent, to

withhold from an individual an epithet of distinction of which a great part of the world thinks him worthy merely on the ground that his own Government regards him as a rebel. At an early stage of the American Revolution, while Washington was considered by the English Government as a rebel chief, he was regarded on the continent of Europe as an illustrious hero; but the undersigned will take the liberty of bringing the cabinet of Vienna into the presence of its own predecessors, and of citing for its consideration the conduct of the Imperial Government itself. In the year 1777 the war of the American Revolution was raging all over these United States. England was prosecuting that war with a most resolute determination, and by the exertion of all her military means to the fullest extent. Germany was at that time at peace with England, and yet an agent of that Congress, which was looked upon by England in no other light than that of a body in open rebellion, was not only received with great respect by the embassador of the Empress Queen at Paris, and by the minister of the Grand Duke of Tuscany, who afterwards mounted the imperial throne, but resided in Vienna for a considerable time—not, indeed, officially acknowledged, but treated with courtesy and respect, and the Emperor suffered himself to be persuaded by that agent to exert himself to prevent the German powers from furnishing troops to England to enable her to suppress the rebellion in America. Neither Mr. Hülsemann nor the cabinet of Vienna, it is presumed, will undertake to say that anything said or done by this Government in regard to the recent war between Austria and Hungary is not borne out, and much more than borne out, by this example of the imperial court. It is believed that the Emperor, Joseph the Second, habitually spoke in terms of respect and admiration of the character of Washington, as he is known to have done of that of Franklin, and he deemed it no infraction of neutrality to inform himself of the progress of the Revolutionary struggle in America, nor to express his deep sense of the merits and the talents of those illustrious men who were then leading their country to independence and renown. The undersigned may add that in 1781 the courts of Russia and Austria proposed a diplomatic congress of the belligerent powers, to which the commissioners of the United States should be admitted.

"Mr. Hülsemann thinks that in Mr. Mann's instructions improper expressions are introduced in regard to Russia, but the undersigned has no reason to suppose that Russia herself is of that opinion. The only observation made in those instructions about Russia is that she 'has chosen to assume an attitude of interference, and her immense preparations for invading and reducing the Hungarians to the rule of Austria, from which they desire to be released, gave so serious a character to the contest as to awaken the most painful solicitude in the minds of Americans.' The undersigned cannot but consider the Austrian cabinet as unnecessarily susceptible in looking upon language like

this as a 'hostile demonstration.' If we remember that it was addressed by the Government to its own agent, and has received publicity only through a communication from one department of the American Government to another, the language quoted must be deemed moderate and inoffensive. The comity of nations would hardly forbid its being addressed to the two imperial powers themselves. It is scarcely necessary for the undersigned to say that the relations of the United States with Russia have always been of the most friendly kind, and have never been deemed by either party to require any compromise of their peculiar views upon subjects of domestic or foreign polity or the true origin of Governments. At any rate, the fact that Austria in her contest with Hungary had an intimate and faithful ally in Russia cannot alter the real nature of the question between Austria and Hungary, nor in any way affect the neutral rights and duties of the Government of the United States or the justifiable sympathies of the American people. It is, indeed, easy to conceive that favor toward struggling Hungary would be not diminished, but increased, when it was seen that the arm of Austria was strengthened and upheld by a power whose assistance threatened to be, and which in the end proved to be, overwhelmingly destructive of all her hopes.

"Toward the conclusion of his note Mr. Hülsemann remarks that 'if the Government of the United States were to think it proper to take an indirect part in the political movements of Europe, American policy would be exposed to acts of retaliation and to certain inconveniences which would not fail to affect the commerce and industry of the two hemispheres.' As to this possible fortune—this hypothetical retaliation—the Government and people of the United States are quite willing to take their chances and abide their destiny. Taking neither a direct nor an indirect part in the domestic or intestine movements of Europe, they have no fear of events of the nature alluded to by Mr. Hülsemann. It would be idle now to discuss with Mr. Hülsemann those acts of retaliation which he imagines may possibly take place at some indefinite time hereafter. Those questions will be discussed when they arise, and Mr. Hülsemann and the cabinet at Vienna may rest assured that, in the mean time, while performing with strict and exact fidelity all their neutral duties, nothing will deter either the Government or the people of the United States from exercising, at their own discretion, the rights belonging to them as an independent nation, and of forming and expressing their own opinions, freely and at all times, upon the great political events which may transpire among the civilized nations of the earth. Their own institutions stand upon the broadest principles of civil liberty, and believing those principles and the fundamental laws in which they are embodied to be eminently favorable to the prosperity of states—to be, in fact, the only principles of government which meet the demands of the present enlightened age—the President has per-

ceived with great satisfaction that, in the constitution recently introduced into the Austrian Empire, many of these great principles are recognized and applied, and he cherishes a sincere wish that they may produce the same happy effects throughout his Austrian Majesty's extensive dominions that they have done in the United States."

Mr. Webster, Sec. of State, to Mr. Hülsemann, Dec. 21, 1850. MSS. notes, Austria; 6 Webster's Works, 488, *ff.*

The correspondence with Austria in respect to the Mann agency will be found in the British and Foreign State Papers for 1849–'50, Vol. 50, 254, Hülsemann's Corres. A fictitious reply, said to have been made by Mr. Hülsemann to Mr. Webster, was published as a sort of hoax in several papers in the United States, and was republished as authentic in L'Annuaire de Lesur of 1851, in page 183 of the appendix. See statement by Mr. Lawrence, 1 Lawrence, Com. sur Droit int., 204, that he was informed by Mr. Everett, who succeeded Mr. Webster, that the letter was a forgery.

The object of Mr. A. D. Mann's mission to Hungary is thus stated by Mr. G. T. Curtis: (2 Curtis' Life of Webster, 533.)

"In June, 1849, President Taylor appointed an agent, Mr. A. Dudley Mann, under secret instructions, to proceed to Hungary, for the purpose of obtaining accurate information concerning the progress of the revolution in that country, with a view of acknowledging her independence, in case of her succeeding in establishing a government *de facto* on a basis sufficiently permanent in its character to justify that step according to the practice of our government in similar cases. This agent, however, did not enter Hungary, or hold any direct communication with her revolutionary leaders; for, on his arrival in Europe, the efforts of these leaders to set up a firm and stable government had failed, in consequence of which he reported to the President against the recognition of Hungarian independence.

"In March, 1850, the Senate having called for a copy of Mr. Mann's instructions, President Taylor sent a message communicating all the documents relating to this agency, and avowing it to have been his intention to have acknowledged the independence of Hungary if she had succeeded in setting up such a government as is usually regarded to be a government *de facto*. This proceeding, when it became publicly known, was considered by the Austrian government as offensive, and its representative in Washington, Mr. Hülsemann, complained of it in an official letter addressed to Mr. Clayton, then Secretary of State. Mr. Clayton answered that Mr. Mann's mission had no other object than to obtain reliable information as to the true state of Hungarian affairs by personal observation. Instructions from the Austrian government to Mr. Hülsemann directing his reply to Mr. Clayton, reached Washington at about the time of President Taylor's death; and when the new administration of President Fillmore was completely organized, viz., on the 30th of September, 1850, this reply was addressed by Mr. Hülsemann to Mr. Webster. The duty was thus devolved upon Mr. Webster of vindicating a measure for which he and President Fillmore were in no way responsible. But Mr. Webster had never admitted the propriety of any discrimination in conducting the foreign relations of the country, between the acts of different administrations, and, as the tone of Mr. Hülsemann's letter to him was far from being courteous or just toward the Government of the United States, he thought proper to

give it an answer of a very firm character, that should thoroughly vindicate the right of this country to do what had been done or proposed in the case of Hungary. * * * The celebrated dispatch, which is commonly known as 'the Hülsemann letter,' was not finished and sent to Mr. Hülsemann by Mr. Webster until the 21st of December. * * *

"As the authorship of this remarkable paper has sometimes been imputed to another person, it may be proper to give the facts respecting its preparation, though they involve nothing more important than a question of literary interest. Mr. Webster, as has been stated, arrived at Marshfield on the 9th of October, 1850, where he remained for the space of two weeks. He brought with him the papers relating to this controversy with Austria. Before he left Washington, he gave to Mr. Hunter, a gentleman then and still filling an important post in the Department of State, verbal instructions concerning some of the points which would be required to be touched on in an answer to Mr. Hülsemann's letter of September 30th, and requested Mr. Hunter to prepare a draft of such an answer. This was done, and Mr. Hunter's draft of an answer was forwarded to Mr. Webster at Marshfield. On the 20th of October, Mr. Webster, being far from well, addressed a note to Mr. Everett, requesting him also to prepare a draft of a reply to Mr. Hülsemann, at the same time sending to Mr. Everett a copy of Mr. Hülsemann's letter and of President Taylor's message to the Senate relating to Mr. Mann's mission to Hungary. On the 21st, Mr. Webster went to his farm in Franklin, New Hampshire, where he remained until the 4th of November. While there, he received from Mr. Everett a draft of an answer to Mr. Hülsemann, which was written by Mr. Everett between the 21st and 24th of October. * * *

"The facts are that while at Franklin, Mr. Webster, with Mr. Hunter's and Mr. Everett's drafts both before him, went over the whole subject, making considerable changes in Mr. Everett's draft, striking out entire paragraphs with his pen, altering some phrases, and writing new paragraphs of his own, but adopting Mr. Everett's draft as the basis of the official paper, a purpose which he expressed to Mr. Everett on his return to Boston toward Washington. Subsequently, when he had arrived in Washington, Mr. Webster caused a third draft to be made in the State Department from Mr. Everett's paper and his own additions and alterations. On this third draft he made still other changes and additions, and when the whole was completed to his own satisfaction, the official letter was drawn out by a clerk, was submitted to the President, and, being signed by Mr. Webster, was sent to Mr. Hülsemann."

(3) Sympathy with liberal political struggles.

§ 47a.

"Born, sir, in a land of liberty; having early learned its value; having engaged in a perilous conflict to defend it; having, in a word, devoted the best years of my life to secure its permanent establishment in my own country, my anxious recollections, my sympathetic feelings, and my best wishes are irresistibly excited, whensoever, in any country, I see an oppressed nation unfurl the banners of freedom. But, above all, the events of the French revolution have produced the deepest solici-

tude, as well as the highest admiration. To call your nation brave, were to pronounce but common praise. Wonderful people! Ages to come will read with astonishment the history of your brilliant exploits! I rejoice that the period of your toils and of your immense sacrifices is approaching. I rejoice that the interesting revolutionary movements of so many years have issued in the formation of a constitution designed to give permanency to the great object for which you have contended. I rejoice that liberty, which you have so long embraced with enthusiasm; liberty, of which you have been the invincible offenders, now finds an asylum in the bosom of a regularly organized Government; a Government which, being formed to secure the happiness of the French people, corresponds with the ardent wishes of my heart, while it gratifies the pride of every citizen of the United States, by its resemblance to their own. On these glorious events, accept, sir, my sincere congratulations.

"In delivering to you these sentiments, I express not my own feelings only, but those of my fellow-citizens, in relation to the commencement, the progress, and the issue of the French revolution; and they will cordially join with me in purest wishes to the Supreme Being, that the citizens of our sister Republic, our magnanimous allies, may soon enjoy in peace that liberty which they have purchased at so great a price, and all the happiness which liberty can bestow.

"I receive, sir, with lively sensibility, the symbol of the triumphs and of the enfranchisement of your nation, the colors of France, which you have now presented to the United States. The transaction will be announced to Congress, and the colors will be deposited with those archives of the United States which are at once the evidences and the memorials of their freedom and independence. May these be perpetual! and may the friendship of the two republics be commensurate with their existence."

Answer of President Washington to the address of the French minister, Mr. Adet, on his presenting the colors of France to the United States, January 1, 1796. (2 Wait's State Papers, 99.)

For papers as to intervention, in 1823–'24, on behalf of the Greeks in their uprising against Turkey, see House Doc. No. 363, 18th Cong., 1st sess.; 5 Am. State Papers (For. Rel.), 251, 252.

For the attitude of this Government in reference to Genet and his appeals for support, see *infra*, §§ 84, 106.

As to question of recognizing foreign revolutions, see *infra*, §§ 69, 70.

As to expression of opinion in reference to foreign liberal movements, see *infra* §§ 56, 389.

"The war of the Greeks for independence early attracted attention in this country. Mr. Dwight, of Massachusetts, on the 24th of December, 1822, presented to the House a memorial in their favor. The sentiment of the House was against meddling with the subject, and the memorial was ordered to lie on the table.

"Early in the next session (December 8, 1823), Mr. Webster submitted to the House a resolution that provision ought to be made by law

for defraying the expense incident to the appointment of an agent or commissioner to Greece, whenever the President shall deem it expedient to make such appointment. On the 19th of the same month the House requested the President to lay before it any information he might have received, and which he might deem it improper to communicate, respecting the condition and future prospects of the Greeks.

"On the 29th a memorial was presented from citizens of New York, requesting the recognition of the independence of Greece. On the 31st the President transmitted the desired information to Congress. On the 2d of January, 1824, Mr. Poinsett laid before the House a resolution of the general assembly of South Carolina that that State would hail with pleasure the recognition by the American Government of the independence of Greece. On the 5th Webster presented a memorial from citizens of Boston. The debate upon Webster's resolution began upon the 19th of January and continued until the 26th. It took a wide range, developed great diversity of sentiment, and produced no result.

"The sympathy for the Greeks continued to manifest itself. On the 2d of January, 1827, Edward Livingston moved to instruct the Committee of Ways and Means to report a bill appropriating $50,000 for provisions for their relief. The bill was negatived on the 27th. Private relief was given, and in his annual message to Congress in the following December the President transmitted to Congress correspondence respecting it with Capo d'Istrias and with the president and secretary of the creek national assembly.

"The first and only treaty with Greece was concluded in London in 1837 between the ministers of the respective powers at that court. It was sent to Congress with the President's message of December 4, 1838."

Mr. J. C. B. Davis, Notes, etc.

The "sympathy" expressed in the United States for the Greek insurrection against Turkey never took the shape of intervention. Of the intervention of Great Britain, France, and Russia in that struggle, Mr. Abdy, in his edition of Kent (1878, p. 50), thus speaks: "The intervention was based on three grounds—first, in order to comply with the request of one of the parties; secondly, on the ground of humanity in order to stay the effusion of blood; and, thirdly, in order to put a stop to piracy and anarchy. If the recognition of the Greek insurgents and the intervention in their favor are to be looked upon as precedents, it is fitting that all the facts connected with them should be investigated, all the documents examined, and a careful distinction made between the policy and the legality of what was done. And then, in spite of the vigorous defense of the British minister of the day, it is difficult to withhold our assent from the judgment passed by an able writer of our own time (Sir W. Harcourt, in 'Historicus') upon the event, when he says that 'the emancipation of Greece was a high act of policy above and beyond the domain of law. As an act of policy it may have been and was justifiable; but it was not the less a hostile act, which, if she had dared, Turkey might properly have resented by war.'"

It is not permissible for one sovereign to address another sovereign on political questions pending in the latter's domains unless invited so to do.

Infra, §§ 78, 79.

The President will not receive officially, unless through the diplomatic representatives of their country, foreigners claiming to speak for political interests in their own land.

Infra, § 91.

As to demonstrations of sympathy with foreign belligerents or insurgents, see *infra*, § 389.

As to sympathy with Hungarian insurrection in 1852, see *supra*, § 47; *infra*, § 48

(4) HOSPITALITY TO POLITICAL REFUGEES.

§ 48.

"You are well aware that the deepest interest is felt, among the people of the United States, in the fate of Kossuth and his compatriots of Hungary, who have hitherto escaped the vengeance of Austria and Russia by seeking an asylum within the boundaries of the Ottoman Empire. The accounts respecting them have been so conflicting—sometimes representing them as having escaped, and at others as being captive—that we have not known what to credit, and have, therefore, declined to interfere in their behalf; nor do we now desire to interfere by entangling ourselves in any serious controversy with Russia or Austria. But we cannot suppose that a compliance with the dictates of humanity, now that the contest with Hungary is over, would involve our friendly relations with any other power. Should you be of the opinion that our good offices would avail anything to secure their safety and their escape from the hands of those who still pursue them, it is desired by your Government that you should intercede with the Sultan in their behalf. The President would be gratified if they could find a retreat under the American flag, and their safe conveyance to this country, by any one of our national ships which may be about to return home, would be hailed with lively satisfaction by the American people."

Mr. Clayton, Sec. of State, to Mr. Marsh, Jan. 12, 1850. MSS. Inst., Turkey.

"By a dispatch of my predecessor, you were instructed to offer to the Sublime Porte to receive Mr. Kossuth and his companions on board of one of the national ships of the United States, to convey them to this country.

"It would be extremely gratifying to the Government and people of the United States if this proposition could have been, at that time, accepted; but it is understood that it's not having been complied with, by the Sublime Port did not arise from a wish, on His Imperial Majesty's part, to detain them, or from any unwillingness that they should proceed to the United States, but was in consequence of the Sultan's offer to Austria, to detain these persons for one year, at the expiration of which time, unless further conventions should be entered into to prolong their detention, they should be at liberty to depart.

"If this be so, the time is near at hand when their release may be expected, and when they may be permitted to seek an asylum in any

part of the world to which they shall be able to procure the means of transportation.

"It is confidently hoped that the Sublime Porte has not made, and will not make, any new stipulation, with any power, for their further detention; and you are directed to address yourself urgently, though respectfully, to the Sublime Porte on this question.

"You will cause it to be strongly represented that while this Government has no desire or intention to interfere, in any manner, with questions of public policy, or international or municipal relations of other governments, not affecting the rights of its own citizens, and while it has entire confidence in the justice and magnanimity and dignity of the Sublime Porte, yet on a matter of such universal interest, it hopes that suggestions proceeding from no other motives than those of friendship and respect for the Porte, a desire for the continuance and perpetuity of its independence and dignified position among the nations of the earth, and a sentiment of commiseration for the Hungarian exiles, may be received by the Porte in the same friendly spirit in which they are offered, and that the growing good feeling and increasing intercourse between the two Governments may be still further fostered and extended, by a happy concurrence of opinion and reciprocity of confidence upon this as upon all other subjects. Compliance with the wishes of the Government and people of the United States in this respect will be regarded as a friendly recognition of their intercession, and as a proof of national good will and regard.

"The course which the Sublime Porte pursued in refusing to allow the Hungarian exiles to be seized upon its soil by the forces of a foreign state or to arrest and deliver them up itself to their pursuers was hailed with universal approbation, it might be said with gratitude, everywhere throughout the United States, and this sentiment was not the less strong because the demand upon the Sublime Porte was made by Governments confident in their great military power, with armies in the field of vast strength, flushed with recent victory, and whose purposes were not to be thwarted or their pursuit stayed by any obstacle less than the interposition of an empire prepared to maintain the inviolability of its territories and its absolute sovereignty over its own soil.

"This Government, jealous of its own territorial rights, regarded with great respect and hearty approbation the firm and lofty position assumed by His Imperial Majesty at that time, and so proudly maintained under circumstances well calculated to inspire doubt, and against demands urged with such gravity and supported by so formidable an array. His Imperial Majesty felt that he should be no longer an independent prince if he consented to be anything less than the sovereign of his own dominions.

"While thus regarding the political position and conduct of the Sublime Porte in reference to other powers, His Majesty's generosity in providing for the wants of the fugitives, thus unexpectedly and in so great

numbers throwing themselves upon his protection, is considered equally worthy of admiration.

* * * * * * * *

"For their attempt at independence they have most dearly paid, and now, broken in fortune and in heart, without home or country, a band of exiles, whose only future is a tearful remembrance of the past, whose only request is to spend the remainder of their days in obscure industry, they await the permission of His Imperial Majesty to remove themselves, and all that may remain to them, across the ocean to the uncultivated regions of America, and leave forever a continent which to them has become more gloomy than the wilderness, more lone and dreary than the desert.

"The people of the United States expect from the generosity of the Turkish monarch that this permission will be given. They wait to receive these exiles on their shores, where, without giving just cause of uneasiness to any Government, they may enjoy whatever of consolation can be afforded by sympathy for their sufferings and that assistance in their necessities which this people have never been late in offering to any, and which they are not now for the first time called upon to render. Accustomed themselves to high ideas of national independence, the people of the United States would regret to see the Government of the vast empire of Turkey constrained, by the force of circumstances, to exercise the duty of keeping prisoners for other powers.

"You will further say to the Sublime Porte that if, as this Government hopes and believes, Mr. Kossuth and his companions are allowed to depart from the dominions of His Imperial Majesty at the expiration of the year commencing in May, 1850, they will find conveyance to the United States in some of its national ships now in the Mediterranean Sea which can be spared for that purpose, and you will, on receiving assurances that these persons will be permitted to embark, ascertain precisely their numbers, and immediately give notice to the commander of the United States squadron on that station, who will receive orders from the proper authorities to be present with such of the ships as may be necessary or can leave the station to furnish conveyance for Kossuth and his companions to the United States."

Mr. Webster, Sec. of State, to Mr. Marsh, Feb. 28, 1851. MSS. Inst., Turkey.

"On the 3d of March last both houses of Congress passed a resolution requesting the President to authorize the employment of a public vessel to convey to this country Louis Kossuth and his associates in captivity.

"The instruction above referred to was complied with, and, the Turkish Government having released Governor Kossuth and his companions from prison, on the 10th of September last they embarked on board of the United States steam frigate Mississippi, which was selected to carry into effect the resolution of Congress. Governor Kossuth left the

Mississippi at Gibraltar for the purpose of making a visit to England, and may shortly be expected in New York. By communications to the Department of State he has expressed his grateful acknowledgments for the interposition of this Government in behalf of himself and his associates. This country has been justly regarded as a safe asylum for those whom political events have exiled from their own homes in Europe, and it is recommended to Congress to consider in what manner Governor Kossuth and his companions, brought hither by its authority, shall be received and treated."

President Fillmore's Second Annual Message, 1851. (Mr. Webster, Secretary of State).

As to Kossuth's erratic performances on the Mississippi steam frigate, when on his way from Smyrna to the United States, see House Ex. Doc. No. 78, 32d Cong., 1st sess. It appears that he was by no means a tractable guest, and that at every port at which the Mississippi stopped he became the object of revolutionary demonstrations, said to have been excited by himself. This was particularly the case at Marseilles, where Kossuth left the steamer, for the purpose, as he alleged, of going direct to England, to rejoin the steamer afterward when at Gibraltar. At Marseilles he was the center of great commotion, which, in the excitement under which he was laboring, he fomented, and permission was refused him to pass through France. He, therefore, after what was almost, according to the report of Mr. Hodge, consul at Marseilles, a mob valedictory at Marseilles, returned to the Mississippi.

"It was on the last day of the year that a formal presentation of M. Kossuth to the President by Mr. Webster took place. On that occasion the reply of Mr. Fillmore to M. Kossuth's address, while it was extremely courteous and sympathetic, was yet perfectly explicit in declaring that the Government could lend no sanction to measures whose design was to foster and aid a revolutionary movement against a friendly power. That declaration was made under circumstances which I will presently describe, and which were well calculated to render M. Kossuth uncomfortable, and, so far as he was open to such an emotion, to add self-reproach to his great disappointment.

"Accordingly, M. Kossuth was in no amiable mood during his visit to Washington. He was reserved and moody, and received the attentions that were lavished upon him with a *distrait* and dissatisfied air, and with a scant return of courtesy. It so happened that I chanced to make my New Year's call on Mr. and Mrs. Webster at the moment that M. Kossuth and his party entered. He stood apart from the few guests that were then present, and his whole bearing threw a chill and restraint over the circle. I remarked to Mrs. Webster that her illustrious guest seemed to be in an unsocial mood, and she replied that when she had attempted to open conversation with him by remarking upon the brightness of the day, he replied that he took no interest in the weather—that his mind was absorbed in painful thoughts about his country—and the conversation, naturally enough, proceeded no further.

"I think it was on the following day that the President gave a dinner to M. Kossuth, to which General Scott and the Cabinet and a few other public men, and to which also I and my wife were invited. As we were about to proceed to the reception-room we encountered Mr. and Mrs.

Webster, and at the suggestion of the latter Mrs. Webster took my arm and he gave his own to my wife. As we were about to move in this order, a servant announced that M. Kossuth was immediately behind us, whereupon Mr. Webster turned to welcome him, announcing to his wife at the same moment—against her remonstrances, for she felt that he had been rude to her—that we must change 'the order of our going,' and that she must take M. Kossuth's arm. During and after dinner the bearing of the guest, in behalf of whom the banquet had been given, was stately and constrained. It was evident that he felt sore and angry. He stood apart after dinner, in a manner which repelled attempts to enter into conversation with him. His whole appearance, alike by his picturesque costume and his attitude and expression, suggested a moody Hamlet, whom neither man nor woman pleased. After a vain attempt to engage him in conversation on Hungarian topics, I asked Mr. Fillmore what had happened to his illustrious guest to have thrown him into such an evidently ungenial state of feeling. He said it was in consequence of what had occurred at his presentation. Mr. Fillmore told me that there had been an explicit understanding with M. Kossuth, through his secretary, that there was to be no allusion in his speech, upon being presented, to the subject of aid or intervention on the part of the Government of the United States, in behalf of the party in Hungary that aimed to secure its independence of Austria, and that he had prepared his reply on the assumption that such would be the character of the address. His surprise was therefore great when M. Kossuth in his address invoked that aid, and expressed the hope that it would be given. The President was compelled, on the spur of the moment, to omit what he had prepared to say, and to declare to him, with perfect courtesy, but with equal explicitness, that nothing like sanction, much less material aid, for the cause of the independence of Hungary could be given by the Government of the United States. The reply was admirable, and could not have been improved had Mr. Fillmore anticipated the tenor of Kossuth's address and prepared his answer. It was courteous, yet extremely dignified and decided. Indeed, it may be regarded as fortunate that an occasion so conspicuous occurred for proclaiming at home and to foreign states that the policy of the Government was then, as it had always been, that of absolute non-intervention in the affairs of European nations.

"Mr. Webster, who presented M. Kossuth to the President, wrote on the same day to a friend that 'Mr. Fillmore received him with great propriety, and his address was all right—sympathy, personal respect, and kindness, but no departure from our established policy.' I inferred from Mr. Fillmore's animated description of the scene that he regarded it as an unfair attempt to entrap him into some expression or some omission which might seem to countenance M. Kossuth's cherished hope of inducing the Government to give both its moral and material aid to renew the struggle for Hungarian independence. It is not strange that he should have passionately desired such a result; but it was a singular delusion to suppose it possible that our Government would enter upon the quixotic career of making the United States the armed champion of European nationalities struggling for liberty and independence.

"At the Congressional dinner given to M. Kossuth his reception was most enthusiastic. In common with all the audience, I was completely entranced by his singularly captivating eloquence. I was assigned a seat next to Mr. Seward, and his demonstrations of applause by hands and feet and voice were excessive. The 'Hungarian Whirlwind' cer-

tainly carried away everything on that occasion, and mingled all parties into one confused mass of admirers prostrate at Kossuth's feet. The speech seemed to me wanting in no element of a consummate masterpiece of eloquence. The orator's picturesque appearance, his archaic English style, his vibrant and thrilling voice, and his skillfully selected and arranged topics, all concurred in the production of an effect upon his audience such as I have never seen surpassed. As addressed to American statesmen, it exhibited, what was very rare among foreigners, a perfect understanding of our Government, as the union of separate states with their autonomy in a given sphere, under a general constitution. His eulogium of this arrangement, and his description of its adaptation and its probable adoption by various nationalities in Europe, was very skillful. The union of Germany in one empire may be regarded by some as the first step toward that confederated German republic which he foretold.

"It was doubtful up to the last moment before Mr. Webster's appearance whether he would come and make a speech on that occasion. * * *

"The speech which Mr. Webster made, as we now read it, seems very appropriate to the occasion and to his own position; but his manner was constrained, and after the high pitch of enthusiasm to which the audience had been wrought up, it fell rather heavily upon them, and did not give that measure of encomium of M. Kossuth which their feelings at the moment craved. But Mr. Webster spoke to an audience, many of whom were bitter political foes or alienated friends, and his recent experience in connection with M. Kossuth, while it had not diminished his admiration of his brilliant ability, had convinced him that, though matchless as an orator, he was no statesman. Moreover, his position as Secretary of State made it incumbent upon him to speak with great caution. If there was an intention on the part of Mr. Seward to entrap Mr. Webster into any compromising declarations by which his influence or his prospects might be injured, it was not successful. The speech might not be vehemently admired; it could not justly be condemned."

Dr. C. M. Butler's reminiscences of Mr. Webster.

"The progress of things is unquestionably onward. It is onward with respect to Hungary; it is onward everywhere. Public opinion, in my estimation at least, is making great progress. It will penetrate all resources; it will come more or less to animate all minds; and, in respect to that country for which our sympathies to-night have been so strongly invoked, I cannot but say that I think the people of Hungary are an enlightened, industrious, sober, well-inclined community, and I wish only to add that I do not now enter into any discussion of the form of government that may be proper for Hungary. Of course, all of you, like myself, would be glad to see her, when she becomes independent, embrace that system of government which is most acceptable to ourselves. We shall rejoice to see our American model upon the Lower Danube and on the mountains of Hungary. But this is not the first step. It is not that which will be our first prayer for Hungary. That first prayer shall be that Hungary may become independent of all foreign powers; that her destinies may be intrusted to her own hands and to her own discretion. I do not profess to understand the social relations and connections of races and of twenty other things that may affect the public institutions of Hungary. All I say is that Hungary can regulate these matters for herself infinitely better than they can be

regulated for her by Austria; and, therefore, I limit my aspirations for Hungary, for the present, to that single and simple point—Hungarian independence, Hungarian self-government, Hungarian control of Hungarian destinies."

Mr. Webster's Speech at Kossuth Banquet, Jan. 7, 1852; 2 Curtis's Life of Webster, p. 578.

"After the disastrous termination of the Hungarian campaign, 1849, Kossuth, with four thousand of his companions, Poles and Hungarians, fled from Hungary, and found safety at Choumla, in the dominions of the Sultan of Turkey. Others, who had taken refuge at Widdin, in Bulgaria, confiding in the amnesty offered them by the Austrian general sent there for that purpose, returned into Hungary only to meet with death in the most ignominious form.

"The exciting struggle between Hungary and Austria had been watched with close attention by the people of this country, and the Government had manifested its interest through the attempt on the part of the chargé d'affaires of the United States, at Vienna, in 1848, 'to open the door of reconciliation between the opposing parties,' which course received, as was stated by Mr. Buchanan, then Secretary of State, the entire approval of the President. Soon after, a special and confidential agent was authorized by President Taylor to obtain minute and reliable information in regard to Hungary, and invested with full power to conclude and sign a treaty with her in the name of the United States.

"Public meetings were held to give expression to the general sympathy, and it was officially stated by this Department, that this Government, in the event of the recognition of her independence, would be most happy to enter into commercial as well as diplomatic relations with independent Hungary.

"And when the conflict was finally determined, the deepest interest was felt among the people of the United States in the fate of Kossuth and his compatriots who had sought an asylum within the boundaries of the Ottoman Empire. The diplomatic agent of the United States was instructed by Mr. Clayton, in January, 1850, to intercede with the Sultan in their behalf, and it was suggested that the President would be gratified if they could find a retreat under the American flag; and it was added that their safe conveyance to this country by any one of our national ships would be hailed with lively satisfaction by the American people. Various obstacles interposed to prevent the immediate fulfillment of this design. Finally, in February, 1851, Mr. Webster, by direction of the President, instructed Mr. Marsh to assure the Sultan that if Kossuth and his companions were allowed to depart from the dominions of His Imperial Majesty at the expiration of the year commencing in May, 1850, for which period he had promised the Austrian Government to detain them, that they would find conveyance to the United States in some of its national ships then in the Mediterranean Sea. In Sep-

tember of the same year, Kossuth, and so many of his companions as could conveniently be received on board the United States steamship Mississippi, embarked for the United States. The original number of the refugees was much diminished during their stay in Turkey; a large number escaped through the connivance of the Turkish authorities, and made their way by means of passports or official certificates, given by the United States agents, to different parts of Europe, and even to the United States, some returned to Hungary, and many arrived in Constantinople. * * * Their necessities compelled the legation and the consulate of the United States—the latter then and for a considerable period previously in charge of the memorialist—to contribute, as it is alleged by both, to their relief to an extent which, as stated by Mr. Marsh, was a serious embarrassment to him. He was aware that he could not lawfully claim any allowance for this expenditure in his account with the contingent fund, but the action of the Government and the expression of public sympathy in America had put him in a position which absolutely compelled him to go much beyond his means in supplying the wants of these suffering outcasts."

Mr. Marcy, Sec. of State, to Mr. Mason, Chairman of Committee on Foreign Relations, U. S. Senate, July 25, 1854. MSS. Report Book.

As to intervention in Koszta's case, see *infra* § 198; Sen. Ex. Doc. No. 1, 33d Cong., 1st sess.; Senate Ex. Doc. No. 40, 53, *id.*

(5) MEDIATION.

§ 49.

President J. Q. Adams's message of May 21, 1828, giving correspondence in reference to mediation between Spain and the Spanish American colonies, is contained in House Doc. No. 497, 20th Cong., 1st sess., 6 Am. State Papers (For. Rel.), 1006.

In a report of Mr. Clay, Secretary of State, March 29, 1826, addressed to the President, and by him sent to Congress, it is stated that "the United States have contracted no engagement, nor made any pledge, to the Governments of Mexico and South America, or to either of them, that the United States would not permit the interference of any foreign powers with the independence or form of government of those nations; nor have any instructions been issued, authorizing any such engagement or pledge. It will be seen that the message of the late President of the United States of the 2d December, 1823, is adverted to in the extracts now furnished from the instructions to Mr. Poinsett, and that he is directed to impress its principles upon the Government of the united Mexican States.

"All apprehensions of the danger, to which Mr. Monroe alludes, of an interference by the allied powers of Europe, to introduce their political systems into this hemisphere, have ceased. If, indeed, an attempt by force had been made, by allied Europe, to subvert the liberties of the southern nations on this continent, and to erect, upon the ruins of their free institutions, monarchical systems, the people of the United States would have stood pledged, in the opinion of their Executive, not to any foreign state, but to themselves and to their posterity, by their dearest

interests and highest duties, to resist to the utmost such attempt; and it is to a pledge of that character that Mr. Poinsett alone refers."

See British and Foreign State Papers (1825–'6), Vol. 13, p. 484.

"On the part of France the mediation (that of Great Britain in 1835, as to the non-performance of the French spoliation treaty) was publicly accepted before the offer of it could be received here. Whilst each of the two Governments has thus discovered a just solicitude to resort to all honorable means of adjusting amicably the controversy between them, it is a matter of congratulation that the mediation has been rendered unnecessary. Under such circumstances the anticipation may be confidently indulged, that the disagreement between the United States and France will not have produced more than a temporary estrangement. * * * Of the elevated and disinterested part the Government of Great Britain has acted, and was prepared to act, I have already had occasion to express my high sense."

President Jackson's Message of Feb. 23, 1836. See *infra*, § 318.

The papers relative to British mediation for the settlement of differences between France and the United States, respecting the convention of claims of 1831, will be found in the British and Foreign State Papers for 1835–'6, Vol. 24, 1104, 1155, 1156. See also same work for 1833–'4, Vol. 22, 595, 964. See further as to the controversy as to these claims between France and the United States, *infra* §§ 148, 228, 316, 318.

"It has never been the purpose of the Government of the United States to interpose, directly or indirectly, in the affairs of the states of Central America, with a view to settle the controversies between them by any influence whatsoever exercised by this Government, without their request or free consent. The mediation and friendly offices of this Government have been solicited, and this request has been complied with and nothing more. Not a step has been taken to coerce either of those Governments into any measure not satisfactory to itself. These Republics are small, and in a great degree powerless, but we respect the national character and independence of each. And although it is to be deeply regretted that, for national purposes, they are not united in some form of confederacy, yet, whilst things remain as they now are, we are to treat with each of them as a separate and independent state."

Mr. Webster, Sec. of State, to the President, Aug. 12, 1852. MSS. Report Book.

"Our minister to China, in obedience to his instructions, has remained perfectly neutral in the war between Great Britain and France and the Chinese Empire, although in conjunction with the Russian minister, he was ever ready and willing, had the opportunity offered, to employ his good offices in restoring peace between the parties. It is but an act of simple justice, both to our present minister and his predecessor, to state that they have proved fully equal to the delicate, trying, and responsible positions in which they have on different occasions been placed."

President Buchanan's Fourth Annual Message, 1860.

"In 1853 this Government, together with those of Great Britain and France, through their diplomatic representatives, concluded important treaties of friendship, commerce, and free fluvial navigation with the *de facto* Government of the Argentine Confederation. Those treaties opened to all the riparian states the commercial opportunities and advantages which, hitherto, had been exclusively controlled and enjoyed by Buenos Ayres. Dissatisfied with a policy which removed the barriers she had set up to confine trade to her own capital, and blind to the fact that, seated as she was at the common door through which alike must pass the trade and travel to and from the regions of the Salado, the Paraguay, and the Uruguay, every vessel which sailed up and down those rivers would pour tribute into her lap, she formally protested against the execution of the treaties of commerce and free navigation, and withdrew from the sisterhood of which she was naturally and politically a member.

"Under these circumstances there was but one consistent course to be pursued by those Governments which had entered into treaty stipulations with the confederation. That was to discountenance the selfish and illiberal policy of Buenos Ayres, and to bestow the moral weight and influence of diplomatic relations upon the Government which had been prompt to recognize the liberal commercial principles of the age."

Mr. Cass, Sec. of State, to Mr. Lamar, Oct. 23, 1857. MSS. Inst., Arg. Rep.

"The United States stand as the great American power to which, as their natural ally and friend, they (the South America nations) will always be disposed first to look for mediation and assistance, in the event of any collision between them and any European nation. As such we may often kindly mediate in their behalf without entangling ourselves in foreign wars or unnecessary controversies. Whenever the faith of our treaties with any of them shall require our interference, we must necessarily interpose."

President Taylor's First Annual Message, 1849.

"The fact that the national attachment of this country to France is so pure and so elevated, constitutes just the reason why it could be more easily supplanted by national insult or injustice than our attachment to any other foreign state could be. It is a chivalrous sentiment, and it must be preserved by chivalrous conduct and bearing on both sides. I deduce from the two positions which I have presented a conclusion which has the most solemn interest for both parties, namely, that any attempt at dictation—much more any aggression committed by the Government of France against the United States—would more certainly and effectively rouse the American people to an attitude of determined resistance than a similar affront or injury committed by any other power. There is reason to believe that interested sympathizers with the insurrection in this country have reported to the French Government that it would find a party here disposed to accept its media-

tion or intervention. I understand that they reckon upon a supposed sympathy between our democratic citizens and the French Government. It may as well be understood as soon as possible that we have no democrats who do not cherish the independence of our country as the first element of democratic faith, while, on the other hand, it is partiality for France that makes us willingly shut our eyes to the fact that that great nation is only advancing towards, instead of having reached, the democratic condition which attracts us in some other countries."

Mr. Seward, Sec. of State, to Mr. Dayton, Dec. 29, 1862; MSS. Inst., France; Dip. Corr., 1863.

On the subject of foreign mediation in the late civil war, see Senate Ex. Doc. No. 38, 39th Cong., 3d Sess.; Brit. and For. State Papers for 1864–'5, vol. 55; 3 Phill. Int. Law (3d ed.), 11.

In the wars between Spain and certain South American Republics in 1865–'6, the United States "seeks the friendship of neither at the cost of unfairness or concealment in its communications to the other. We have tendered our good offices to each. They have not been accepted. We have concurred in a suggestion that the merits of these unhappy contests should be referred to the Emperor of Russia. We are quite willing to see Great Britain and France undertake the task of mediators. We will favor that or other mediations the parties may be inclined to adopt. We seek no acknowledgments or concessions from either party as an equivalent for impartiality and friendship."

Mr. Seward, Sec. of State, to Mr. Hale, Oct. 27, 1866; MSS. Inst., Spain. See same to same, Dec. 20, 1866, inclosing mediating action of House of Representatives, and making specific proposals of mediation; and see also same to same, Feb. 25, 1867, Aug. 27, 1868.

Undue diplomatic pressure upon two South American belligerents to secure their acceptance of the good offices of the United States as a mediator is to be discountenanced.

Mr. Seward, Sec. of State, to Mr. Asboth, Buenos Ayres, April 1, 1867; MSS. Inst., Arg. Rep.

"We were asked by the new Government to use our good offices, jointly with those of European powers, in the interests of peace. Answer was made that the established policy and the true interests of the United States forbade them to interfere in European questions jointly with European powers. I ascertained, informally and unofficially, that the Government of North Germany was not then disposed to listen to such representations from any power, and though earnestly wishing to see the blessings of peace restored to the belligerents, with all of whom the United States are on terms of friendship, I declined, on the part of this Government, to take a step which could only result in injury to our true interests, without advancing the object for which our intervention was invoked. Should the time come when the action of the United States can hasten the return of peace, by a single hour, that

action will be heartily taken. I deemed it prudent, in view of the number of persons of German and French birth living in the United States, to issue, soon after official notice of a state of war had been received from both belligerents, a proclamation, defining the duties of the United States as a neutral and the obligations of persons residing within their territory, to observe their laws and the laws of nations. This proclamation was followed by others, as circumstances seemed to call for them. The people, thus acquainted, in advance of their duties and obligations, have assisted in preventing violations of the neutrality of the United States."

President Grant's Second Annual Message, 1870. See *infra*, § 105.

On application of the German Government, the United States legation in China was instructed in 1870 to use its good offices to aid Germany in securing from China the use of the island of Kulangsen as a coaling station, not seeking, however, to acquire the sovereignty thereof.

Mr. Fish, Sec. of State, to Mr. Low, May 26, 1870; MSS. Inst., China.

"Washburne telegraphs that France requests United States to join other powers in effort for peace. Uniform policy and true interest of United States not to join European powers in interference in European questions. President strongly desires to see war arrested and blessings of peace restored. If Germany also desires to have good offices of United States interposed, President will be glad to contribute all aid in his power to secure restoration of peace between the two great powers now at war, and with whom United States has so many traditions of friendship. Ascertain if North Germany desires such offices, but without making the tender thereof unless assured they will be accepted."

Mr. Fish, Sec. of State, telegram to Mr. Bancroft, Sept. 9, 1870; MSS. Inst., Germ.; For. Rel., 1870.

"The reasons which you present against an American intervention between France and Germany are substantially among the considerations which determined the President in the course and policy indicated to you in the cable dispatches from this office on the 9th instant, and in rejecting all idea of mediation unless upon the joint request of both of the warring powers.

"It continues to be the hope of the President, as it is the interest of the people of this country, that the unhappy war in which France and North Germany are engaged should find an early end.

"This Government will not express any opinion as to the terms or conditions upon which a peace may or should be established between two Governments equally sharing its friendship, but it is hoped that the prolongation of the war may not find its cause either in extreme demands on the one side, or extreme sensitiveness on the other side.

"So far as you can consistently and without my official interposition of advice or of counsel, it is hoped that you will lose no proper opportunity to indicate the wishes and hopes of the President and of the American people as above represented, and to contribute what you may to the presentation of such terms of peace as befit the greatness and the power which North Germany has manifested, and as shall not be humiliating or derogatory to the pride of the great people who were our earliest and fast ally."

Mr. Fish, Sec. of State, to Mr. Washburne, Sept. 30, 1870; MSS. Inst., France; For. Rel., 1870.

"I have the honor to acknowledge the receipt of your note to this Department, dated the 8th instant, in which you refer to previous correspondence in reference to the inquiry you made in June last, by direction of the Marquis of Salisbury, as to whether the Government of the United States would be disposed to join Great Britain and Germany in offering their mediation with a view of concluding the war between Chili and Peru. You also mention the reply of this Government to that proposal, expressing its readiness to assist in the restoration of peace between the belligerents whenever its good offices might be usefully proffered, but not favoring a premature effort nor an effort in combination with other neutral powers which would carry the impression of dictation or coercion in disparagement of belligerent rights.

"You say, furthermore, that you have recently observed statements in American newspapers to the effect that this Government has instructed its ministers at Lima and Santiago de Chili to tender the good offices of the United States to secure an honorable settlement of the difficulties between the belligerent Governments, whenever they shall intimate that such friendly services will be accepted with that end in view, and you express the hope that I will think myself justified in acquainting you, for the information of Her Majesty's Government, as to whether the newspaper statements to which you refer are founded on fact, and whether the hope may be entertained that the steps thus reported to have been taken by the Government of the United States may lead to the conclusion of peace between the Republics of Chili and Peru.

"In reply, I have to say that I have delayed answering your note above mentioned, which was brought to my notice on my return to Washington, on the 16th instant, until I could examine the correspondence with the several ministers at Peru, Chili, and Bolivia, which had taken place during my absence.

"The statements in the newspapers to which you refer, have not specifically attracted my attention. I am able to say, however, that our ministers have given and are giving attention to the wishes of this Government to proffer its good offices in favor of peace at the earliest indication of the readiness of the belligerents to consider such good offices acceptable.

"This purpose this Government will not fail to pursue, and with good hopes that the events of the war may soon dispose all the belligerents to desire its honorable conclusion. It would be premature to anticipate an immediate opportunity for a definite proposal of peaceful methods through the good offices of this Government which would gain the concurrent consent of the three belligerents.

"It will give me pleasure early to acquaint you, for the information of your Government, with any decisive indications of a disposition to make a peaceful solution of the unhappy controversy through the interposed friendship of this Government."

Mr. Evarts, Sec. of State, to Sir E. Thornton, Sept. 24, 1879; MSS. Note, Gr. Brit.; For. Rel., 1879.

"The war between Peru, Bolivia, and Chili still continues. The United States have not deemed it proper to interpose in the matter further than to convey to all the Governments concerned the assurance that the friendly offices of the Government of the United States for the restoration of peace upon an honorable basis will be extended, in case the belligerents shall exhibit a readiness to accept them."

President Hayes's Third Annual Message 1879.

"The war between the Republic of Chili, on the one hand, and the allied Republics of Peru and Bolivia on the other, still continues. This Government has not felt called upon to interfere in a contest that is within the belligerent rights of the parties as independent states. We have, however, always held ourselves in readiness to aid in accommodating their difference, and have at different times reminded both belligerents of our willingness to render such service.

"Our good offices, in this direction, were recently accepted by all the belligerents, and it was hoped they would prove efficacious; but I regret to announce that the measures which the ministers of the United States at Santiago and Lima were authorized to take, with the view to bring about a peace, were not successful. In the course of the war some questions have arisen affecting neutral rights; in all of these the ministers of the United States have, under their instructions, acted with promptness and energy in protection of American interests."

President Hayes's Fourth Annual Message 1880.

"For some years past a growing disposition has been manifested by certain states of Central and South America to refer disputes affecting grave questions of international relationship and boundaries to arbitration rather than to the sword. It has been, on several such occasions, a source of profound satisfaction to the Government of the United States to see that this country is, in a large measure, looked to by all the American powers as their friend and mediator. The just and impartial counsel of the President in such cases has never been withheld, and

his efforts have been rewarded by the prevention of sanguinary strife or angry contentions between peoples whom we regard as brethren."

Mr. Blaine, Sec. of State, to Mr. Morgan, Nov. 29, 1881; MSS. Inst., Mexico.

"The war between Peru and Bolivia, on the one side, and Chili on the other, began more than three years ago. On the occupation by Chili in 1880 of all the littoral territory of Bolivia, negotiations for peace were conducted under the direction of the United States. The allies refused to concede any territory, but Chili has since become master of the whole coast of both countries and of the capital of Peru. A year since, as you have already been advised by correspondence transmitted to you in January last, this Government sent a special mission to the belligerent powers to express the hope that Chili would be disposed to accept a money indemnity for the expenses of the war and to relinquish her demand for a portion of the territory of her antagonist.

"This recommendation, which Chili declined to follow, this Government did not assume to enforce; nor can it be enforced without resort to measures which would be in keeping neither with the temper of our people nor with the spirit of our institutions.

"The power of Peru no longer extends over its whole territory, and, in the event of our interference to dictate peace, would need to be supplemented by the armies and navies of the United States. Such interference would almost inevitably lead to the establishment of a protectorate—a result utterly at odds with our past policy, injurious to our present interests, and full of embarrassments for the future.

"For effecting the termination of hostilities upon terms at once just to the victorious nation and generous to its adversaries, this Government has spared no efforts save such as might involve the complications which I have indicated.

"It is greatly to be deplored that Chili seems resolved to exact such rigorous conditions of peace, and indisposed to submit to arbitration the terms of an amicable settlement. No peace is likely to be lasting that is not sufficiently equitable and just to command the approval of other nations."

President Arthur's Second Annual Message, 1882.

"The traditional attitude of the United States towards the sister Republics of this continent is one of peace and friendly counsel.

"When as colonies they threw off their political connection with Europe, we encouraged them by our sympathies. By the moral weight of our official declarations we prevented intervention, either to restore old political connections with Europe or to create new ones. The policy we then adopted has been since maintained. While we would draw them nearer to us by bonds of mutual interest and friendly feeling, our sole political connection springs from the desire that they should be prosperous and happy under the republican form of government

which they and we have chosen. We aim to be regarded as a disinterested friend and counselor, but we do not assume to impose our wishes upon them, or to act as arbitrator, or umpire, in their disputes unless moved to it by the wish of both parties, or by controlling interests of our own."

Mr. Frelinghuysen, Sec. of State, to Mr. Trescot, Feb. 24, 1882; MSS. Inst., Chili.

"It seems to the President that the time has come when an effort for peace between the South American Republics can be made with some reasonable hope of success. He has accordingly instructed Mr. Logan upon the subject, giving him a large measure of discretion.

"This instruction is taken to you by Mr. Logan, who is directed to confer with you before proceeding to Santiago. You are aware that while Mr. Trescot was in Peru he visited Montero, and recognized him as the head of the Republic. It may now be assumed that this act has received the sanction of the Department. It will, therefore, be proper that after conferring with Mr. Logan and taking every possible precaution to prevent the difference between our legations in Chili and Peru, which have unhappily thwarted the policy and lessened the influence of the United States in the past, you will proceed at an early day to join the only Government in Peru which is now recognized by the United States.

"It is understood that the principal difficulty in the way of opening negotiations is the disinclination of the Chilian Government to recognize Montero and his Government. Mr. Logan's first efforts at Santiago will be directed to removing this obstacle and to securing at least such provisional recognition as may be involved in the fact of negotiations. If this shall be found to involve the calling together of a congress by President Montero, Mr. Logan will endeavor to prevent any Chilian opposition to it.

"Meanwhile it will be your duty to impress upon President Montero and his advisers the necessity of recognizing these severe results of unsuccessful war.

"The interest which the United States takes in the fortunes of Peru, and the great desire which they have to preserve its autonomy, and as much of its territory and wealth as is consistent with the reasonable rights and demands of Chili, must not be interpreted into a purpose to stand by Peru in refusing and resisting such demands. You must make that clear. If the voice of the United States could be listened to, the war would be ended by the payment of a money indemnity without sacrificing territory. But the voice of the United States will not be listened to while speaking only such words. Chili will not abandon all the acquisitions that the fortunes of war have given her. Unless Peru consents to negotiate on the basis of a surrender of territory, the United States are powerless to help her.

"If Peru consents to negotiate on the basis of a cession of territory, you will acquaint President Montero's Government generally with the fact that Mr. Logan is instructed in that event to secure from Chili the most favorable terms which the moral influence of the United States can obtain.

"The form in which the two belligerents will approach each other, if they consent to enter upon negotiations, must necessarily be left much to opportunity and to the judgment of Mr. Logan. You will confer with him freely as to the feeling of Peru, and he must decide whether he can obtain terms which he is willing to submit to Peru; whether the offer must first come from Peru or from Chili is a point which must be left for his decision. He is authorized to go to Peru at the proper time and confer with you. In approaching the Government of Peru he is directed to avail himself always of your intermediary services.

"I inclose for your guidance a copy of the instructions to Mr. Logan, and also a copy of the instructions to Mr. Maney.

"In case matters happily proceed so far as to call for serious negotiations, Mr. Maney is instructed to do whatever may be advised by you or Mr. Logan, or both, and to take no steps until so requested."

Mr. Frelinghuysen, Sec. of State, to Mr. Partridge, June 26, 1882; MSS. Inst., Peru; For. Rel., 1882.

A concerted movement for this purpose will not be approved. The United States minister at Lima having, early in 1883, united with the representatives of France, Great Britain, and Italy, to bring about a joint intervention in South American affairs, this action was disapproved by the Secretary of State.

Mr. Frelinghuysen, Sec. of State, to Mr. Logan, March 7, 1883; MSS. Inst., Chili; same to same, April 2, 1883. See *infra*, § 102.

A volunteer proposition by the minister of the United States and other foreign ministers at Hayti, to mediate between the Haytian Government and insurgents, cannot be sustained by the Government of the United States.

Mr. J. Davis, Asst. Sec., to Mr. Langston, June 4, 1883; MSS. Inst., Hayti; For. Rel., 1883.

Mr. Hall is informed that, while the United States Government is prepared to use its influence in avertiug a conflict and to promote peace, and deems advisable a voluntary combination of interests of the Central American states, no display of force on the part of any one or more states to coerce the others can be countenanced.

Mr. Bayard, Sec. of State, to Mr. Hall, March 10, 1885. MSS. Inst., Cen. Am.; For. Rel., 1885.

"England again offered mediation between the United States and Mexico in 1847, but the offer was not accepted by either party. There have been instances of offers of mediation in civil wars; but they pre-

sent cases of such delicacy and difficulty as to have been seldom accepted, or, if accepted, successful."

Dana's Wheaton, § 73, note 40.

"There is a distinction between the case of *good offices* and of *mediator*. The demand of good offices or their acceptance does not confer the right of mediator. (Klüber, Droit des Gens Moderne de l'Europe, Part II, tit. 2, § 1., ch. 2, § 160.) The offer of Russia to mediate between the United States and Great Britain, in the war of 1812, was at once accepted by the former; and in order to avoid delays incident to the distance of the parties, plenipotentiaries were commissioned to conclude a treaty of peace with persons clothed with like power on the part of Great Britain. (Wait's State Papers, Vol. IX, p. 223; President Madison's message, May 25, 1813.) The refusal of Great Britain, at that time in the closest alliance with Russia, can only be accounted for by the supposed accordance between the United States and Russia in questions of maritime law. Sir James Mackintosh considered the rejection of the proffered mediation, whereby hostilities were unnecessarily prolonged, the less justifiable, as 'a mediator is a common friend, who counsels both parties with a weight proportioned to their belief in his integrity and their respect for his power. But he is not an arbitrator, to whose decisions they submit their differences, and whose award is binding on them. Hansard's Parliamentary Debates, Vol. XXX, p. 526, April 11, 1815."

Lawrence's Wheaton, ed. 1863, p. 495.

As to mediation of Russia in war of 1812, see 3, Am. State Papers; For. Rel., 623 *ff*.

As to the attitude assumed by the successive administrations of Adams and Jackson to Bolivar, see instructions of Mr. Van Buren, Sec. of State, to Mr. Moore, April 9, 1829; same to same, Dec. 12, 1829; MSS. Inst., Am. States.

A part of the correspondence between Buenos Ayres and the United States in reference to mediation in respect to the differences between Buenos Ayres and France will be found in the British and Foreign State Papers for 1842–'3, vol. 31, 790 *ff*.

As to San Salvador's difficulties with British authorities, see Senate Ex. Doc. No. 43, 31st Cong., 2d sess.

As to the offer of friendly offices by the Government of the United States to terminate the war raging in South America between Paraguay, on the one side, and Brazil, the Argentine Republic, and Uruguay on the other, see Mr. Seward, Sec. of State, to Mr. Asboth (Buenos Ayres), Dec. 20, 1866. MSS. inst., Arg. Rep.

As to mediation between Spain and Peru, see Mr. Seward, Sec. of State, to Mr. Hovey, Dec. 20, 1866; MSS. Inst., Peru.

As to mediation between Spain and the allied South American republics, see Mr. Fish, Secretary of State, to Mr. Kilpatrick, Jan. 15, 1868; MSS. Inst., Chili.

For other instances of mediation see also Mr. Evarts to Mr. Osborne, Dec. 27, 1880; Mr. Blaine to Mr. Osborne, June 13, 1881; Mr. Blaine to Mr. Kilpatrick, June 15, 1881; MSS. Inst., Chili.

As to mediation to renew diplomatic intercourse between France and Mexico see Mr. Fish, Sec. of State, to Mr. Nelson, Dec. 19, 20, 1872; MSS. Inst., Mex.

The armistice between Spain and the allied republics of Bolivia, Chili, Ecuador, and Peru, concluded in 1871, under the mediation of the United States, will be found in the British and Foreign State Papers for 1874–'5, vol. 66.

As to mediation between Holland and Venezuela, see Mr. Fish to Mr. Birney, March 9, 1876; June 14, 1876; MSS. Inst., Netherlands.

As to mediation between China and Japan, see Mr. Evarts, Sec. of State, to Mr. G. F. Seward, March 4, 1880; MSS. Inst., China.

As to mediation between Mexico and Guatemala, see Mr. Blaine to Mr. Morgan, Nov. 28, quoted *infra*, § 58.

As to mediation between Chili and Peru, see *infra*, § 59.

A summary of modern mediations will be found in Calvo, Droit Int., 3d ed., 2 vol., 536 ff.

(6) NECESSITY, AS WHERE MARAUDERS CAN BE CHECKED ONLY BY SUCH INTERVENTION.

§ 50.

When there is no other way of warding off a perilous attack upon a country, the sovereign of such country can intervene by force in the territory from which the attack is threatened in order to prevent such attack.

Supra, § 17.

By the law of nations a piratical settlement in a remote island, not under the control of any civilized nation, may be broken up by United States cruisers, and the offenders seized and sent to the United States for trial.

Mr. Livingston, Sec. of State, to Mr. Baylies, April 3, 1832; MSS. Inst., Am. States. See *infra*, § 50*a*.

"Unfortunately, many of the nations of this hemisphere are still self-tortured by domestic dissensions. Revolution succeeds revolution; injuries are committed upon foreigners engaged in lawful pursuits. Much time elapses before a government sufficiently stable is erected to justify expectation of redress. Ministers are sent and received, and before the discussions of past injuries are fairly begun, fresh troubles arise; but too frequently new injuries are added to the old, to be discussed together with the existing government, after it has proved its ability to sustain the assaults made upon it, or with its successor, if overthrown. If this unhappy condition of things continue much longer, other nations will be under the painful necessity of deciding whether justice to their suffering citizens does not require a prompt redress of injuries by their own power, without waiting for the establishment of a government competent and enduring enough to discuss and make satisfaction for them."

President Jackson's Seventh Annual Message, 1835.

"It is a fundamental principle in the laws of nations that every state or nation has full and complete jurisdiction over its own territory to the exclusion of all others, a principle essential to independence, and there-

fore held most sacred. It is accordingly laid down by all writers on those laws who treat of the subject, that nothing short of *extreme necessity* can justify a belligerent in entering with an armed force on the territory of a neutral power, and, when entered, in doing any act which is not forced on him by the like necessity which justified the entering."

Mr. Calhoun's speech on McLeod's case, June 11, 1841; 3 Calhoun's Works, 625. (See *supra*, § 21, as to McLeod's case; *infra*, § 50, c, as to the case of the Caroline.)

As to expenses incurred by Texas in repelling invasions of Indians and Mexicans, see S. Ex. Doc. 19, Forty-fifth Congress, second session, January 22, 1878.

As to depredations by reason of incursions of Mexicans and Indians, and resolution of Texas claiming indemnity for losses thereby sustained, and asking to be reimbursed for expenses incurred in defending frontiers, see H. Mis. Doc. 37, Forty-fourth Congress, first session, July 17, 1876; H. Mis. Doc. 185, Forty-fourth Congress, first session.

For report of special committee, recommending that a military force be stationed on the Rio Grande, and that the President authorize the troops, when in close pursuit of the raiders, to cross to the Mexican side and use such measures as will recover the stolen property and prevent such raids, see H. Rep. 343, Forty-fourth Congress, first session.

For testimony taken by Committee on Military Affairs, see H. Mis. Doc. 64, Forty-fifth Congress, second session, January 12, 1878.

As to pursuit of deserters in Canada, see Brit. and For. State Papers, 1860-'1, vol. 51.

As to treaty with Mexico for reciprocal pursuit of raiders, see *supra*, § 19.

(a) Amelia Island.

§ 50a.

Amelia Island, at the mouth of St. Mary's River, and at that time in Spanish territory, was seized in 1817 by a band of buccaneers, under the direction of an adventurer named McGregor, who in the name of the insurgent colonies of Buenos Ayres and Venezuela preyed indiscriminately on the commerce of Spain and of the United States. The Spanish Government not being able or willing to drive them off, and the nuisance being one which required immediate action, President Monroe called his Cabinet together in October, 1817, and directed that a vessel of war should proceed to the island and expel the marauders, destroying their works and vessels.

"In the summer of the present year, an expedition was set on foot East Florida by persons claiming to act under the authority of some of the colonies, who took possession of Amelia Island, at the mouth of St. Mary's River, near the boundary of the State of Georgia. As the province lies eastward of the Mississippi, and is bounded by the United States and the ocean on every side, and has been a subject of negotiation with the Government of Spain, as an indemnity for losses by spoliation or in exchange for territory of equal value westward of the Mississippi, a fact well known to the world, it excited surprise that any countenance should be given to this measure by any of the colonies. As it would be difficult to reconcile it with the friendly relations existing between the United States and the colonies, a doubt was enter-

tained whether it had been authorized by them or any of them. This doubt has gained strength by the circumstances which have unfolded themselves in the prosecution of the enterprise, which have marked it as a mere private unauthorized adventure. Projected and commenced with an incompetent force, reliance seems to have been placed on what might be drawn, in defiance of our laws, from within our limits; and, of late, as their resources have failed, it has assumed a more marked character of unfriendliness to us, the island being made a channel for the illicit introduction of slaves from Africa into the United States, an asylum for fugitive slaves from the neighboring States, and a port for smuggling of every kind.

"A similar establishment was made at an earlier period by persons of the same description, in the Gulf of Mexico, at a place called Galveston, within the limits of the United States, as we contend, under the cession of Louisiana. This enterprise has been marked in a more signal manner by all the objectionable circumstances which characterized the other, and more particularly by the equipment of privateers, which have annoyed our commerce, and by smuggling. These establishments, if ever sanctioned by any authority whatever, which is not believed, have abused their trust and forfeited all claims to consideration. A just regard for the rights and interests of the United States required that they should be suppressed, and orders have accordingly been issued to that effect. The imperious considerations which produced this measure will be explained to the parties whom it may in any degree concern."

President Monroe's First Annual Message, 1817.

President Monroe's Messages of Dec. 15, 1817, Jan. 13, 1818, March 25, 1818, as to Amelia Island, are given in 11 Wait's State Papers, 343.

On the same topic, see report of House Com. on For. Rel., Jan. 10, 1818, 4 Am. State Pap.; For. Rel., 132.

"You will have been informed through the channel of the public prints of the manner in which Amelia Island has in the course of the last summer been occupied by an assemblage of adventurers under various commanders, and with commissioners, real or pretended, from several of the South American insurgent governments. You must have heard also of the feeble and ineffectual attempt made by the Spanish commanding authorities in East Florida to recover possession of the island. A similar band of desperate characters from various nations, and presumably impelled by motives of plunder alone, have formed a lodgment at Galveston, which we consider within the limits of the United States. These places have not only been consequently made receptacles for privateers illegally fitted out from our ports, but the means of every species of illicit traffic, and especially of introducing slaves illegally into the United States. The President has therefore determined to break up those settlements, which are presumed to have been made without proper authority from any Government; and which

if authorized by any Government, have assumed an attitude too pernicious to the peace and prosperity of this Union and of its citizens to be tolerated. The orders for breaking them up have been given, and are in a train of execution. Possession will be taken of Galveston as within the limits of the United States, and perhaps of Amelia Island, to prevent its being taken again by similar adventurers for the same purposes, Spain being notoriously unable either to retain possession of it against them or to recover it from them."

Mr. Adams, Sec. of State, to Mr. Erving, Nov. 11, 1817; MSS. Inst. Ministers.

"When an island is occupied by a nest of pirates, harassing the commerce of the United States, they may be pursued and driven from it, by authority of the United States, even though such island were nominally under the jurisdiction of Spain, Spain not exercising over it any control."

Mr. Adams, Sec. of State, to Mr. Hyde De Neuville, Jan. 27, 1818; MSS. For. Leg. notes. See President Monroe, confidential to Mr. Madison, Nov. 24, Dec. 22, 1817; Madison MSS., Dep. of State.

A detailed account of McGregor's occupation of, and filibustering expeditions from, Amelia Island is given in 2 Parton's Jackson, 421 *ff.*

"No dissatisfaction has been expressed here at our occupation of Amelia Island."

Mr. Rush, Minister at London, to Mr. Adams, Sec. of State, March 2, 1818; MSS. Dispatch, Gr. Brit.

President Monroe's announcement that he had authorized expeditions against Amelia Island and Galveston for the purpose of suppressing the bands of buccaneers who were harbored in those places was followed by protests, not merely from Onis, the Spanish minister at Washington, but from Pazos, the agent of the as yet unrecognized Spanish-American colonies. The Secretary of State having declined to confer officially with Pazos on the subject, he presented a petition to the House of Representatives. This petition, however, though it had the support of the Speaker, Mr. Clay, was laid on the table on March 14, 1818, by a vote of 124 to 28.

The possession taken by the United States of Amelia Island, in Florida, gave it a possessory title, for which it was accountable only to Spain.

Mr. Gallatin, minister to France, to Baron Pasquier, French minister of foreign affairs, June 28, 1821; 2 Gallatin's writings, 187.

As to *de facto* government of Amelia Island, see *supra*, § 7.

(*b*) Pensacola and other Florida posts.

§ 50*b*.

In 1815, under orders of Mr. Monroe, measures were taken for the destruction of a fort held by outlaws of all kinds on the Appalachicola River, then within the Spanish Territory, from which parties had gone forth to pillage within the United States. The governor of Pensacola

had been called upon to suppress the evil and punish the marauders, but had refused; and, on his refusal, the Spanish Territory was entered, and the fort attacked and destroyed on the ground of necessity.

See President Monroe's Second Annual Message, 1818.

"In authorizing Major-General Jackson to enter Florida in pursuit of the Seminoles, care was taken not to encroach on the rights of Spain. I regret to have to add that, in executing this order, facts were disclosed respecting the conduct of the officers of Spain in authority there, in encouraging the war, furnishing munitions of war, and other supplies to carry it on, and in other acts not less marked, which evinced their participation in the hostile purposes of that combination, and justified the confidence with which it inspired the savages that by those officers they would be protected. A conduct so incompatible with the friendly relations existing between the two countries, particularly with the positive obligation of the fifth article of the treaty of 1795, by which Spain was bound to restrain, even by force, those savages from acts of hostility against the United States, could not fail to excite surprise. The commanding general was convinced that he should fail in his object, that he should, in effect, accomplish nothing, if he did not deprive those savages of the resource on which they had calculated, and of the protection on which they had relied in making the war. As all the documents relating to this occurrence will be laid before Congress, it is not necessary to enter into further detail respecting it.

"Although the reasons which induced Major-General Jackson to take these posts were duly appreciated, there was nevertheless no hesitation in deciding on the course which it became the Government to pursue. As there was reason to believe that the commanders of these posts had violated their instructions, there was no disposition to impute to their Government a conduct so unprovoked and hostile. An order was in consequence issued to the general in command there, to deliver the posts—Pensacola, unconditionally, to any person duly authorized to receive it, and Saint Mark's, which is in the heart of the Indian country, on the arrival of a competent force to defend it against those savages and their associates."

President Monroe's Second Annual Message, 1818. See President Monroe to Mr. Madison, July 20, 1818, Madison MSS., Dep. of State.

Necessity justifies an invasion of foreign territory so as to subdue an expected assailant; and on this ground may be sustained General Jackson's attack on Pensacola.

Mr. J. Q. Adams, 4 J. Q. Adams's Mem., 113.

"The Executive Government have ordered, and, as I conceive, very properly, Amelia Island to be taken possession of. This order ought to be carried into execution at all hazards, and simultaneously the whole of East Florida seized and held as indemnity for the outrages of Spain upon the property of our citizens. * * * The order being given for the possession of Amelia Island, it ought to be executed, *or our enemies*,

internal and external, will use it to the disadvantage of our Government. If our troops enter the territory of Spain in pursuit of our Indian enemy, all opposition that they meet with must be put down, or we will be involved in danger and disgrace."

General Jackson to Mr. Monroe, Jan. 6, 1818, MSS. Monroe Papers.

"I could adopt no other way to put '*an end to the war*' but by possessing myself of the stronghold that was a refuge to the enemy, and afforded them the means of offense."

General Jackson's (1818) letter to Sec. of War, from papers of Mr. Geo. W. Campbell, quoted 2 Parton's Jackson, 500.

General Jackson put his seizure and occupation of the fort at Saint Mark's, which was within Spanish territory, expressly on the ground of necessity. In his letter to the governor of Saint Mark's, which he sent by his aide-de-camp, Lieutenant Gadsden, he declared that the Spanish garrison, from its feebleness, would be unable to resist the attacks of Indians who intended to make it a base for their operations against the United States.

"To prevent the recurrence of so gross a violation of neutrality, and to exclude our savage enemies from so strong a hold as Saint Mark's, I deem it expedient to garrison that fortress with American troops until the close of the present war. This measure is justifiable on the immutable principles of self-defense, and cannot but be satisfactory, under existing circumstances, to his Catholic Majesty the King of Spain. Under existing treaties between the two Governments, the King of Spain is bound to preserve in peace with the citizens of the United States, not only his own subjects, but all Indian tribes residing within his territory. When called upon to fulfill that part of the treaty in relation to a savage tribe who have long depredated with impunity on the American frontier, incompetency is alleged, with an acknowledgment that the same tribe have acted in open hostility to the laws, and invaded the rights of His Catholic Majesty. As a mutual enemy, therefore, it is expected that every facility will be afforded by the agents of the King of Spain to chastise these lawless and inhuman savages. In this light is the possession of Saint Mark's by the American forces to be viewed."

2 Parton's Jackson, 451.

"When they (European powers) know the whole of the affair of Pensacola, I have no doubt they will withdraw all idea of intermeddling between Spain and us. I trust we shall be able to avoid entanglements with the European alliance. We may let them alone, for they cannot conquer the South Americans."

Mr. Jefferson to Mr. Monroe, President, Sept. 17, 1818; MSS. Monroe Papers, Dep. of State.

When the sovereign of a territory permits it to be made the base of hostilities by outlaws and savages against a country with which such sovereign is at peace, the government of the latter country is entitled, as a matter of necessity, to pursue the assailants wherever they may be, and to take such measures as are necessary to put an end to their aggressions.

Mr. Adams, Sec. of State, to Mr. de Onis, Nov. 30, 1818; MSS. For. Leg. Notes.

Mr. Adams's defense of General Jackson's course in the Seminole war, to which, after some modifications, he obtained the assent of Mr. Monroe and of the Cabinet, is a paper which, though of extraordinary ability, is of too great length to be here republished. The point of international law, above stated, is the exclusive basis on which it rests.

As to Jackson's action in capturing Pensacola, see 3 Schouler's Hist. U. S., 74. The President, after consulting the Cabinet, directed Pensacola to be given back to Spain.

As to effect of taking of Pensacola on France, see dispatch of Mr. Gallatin to Mr. J. Q. Adams, July 22, 1818; 2 Gallatin's writings, 69.

The course of Mr. Monroe in sustaining General Jackson in this movement is discussed in 1 Benton's Thirty Years in the Senate, 167.

General Jackson's correspondence in reference to the war conducted by him in Florida, is given in 1 Amer. State Papers, Misc., 801 *ff.*

(c) STEAMBOAT CAROLINE. (1838.)

§ 50c.

"The destruction of the steamboat Caroline at Schlosser, four or five years ago, occasioned no small degree of excitement at the time, and became the subject of correspondence between the two Governments. That correspondence having been suspended for a considerable period, was renewed in the spring of the last year, but no satisfactory result having been arrived at, it was thought proper, though the occurrence had ceased to be fresh and recent, not to omit attention to it on the present occasion. It has only been so far discussed in the correspondence now submitted as it was accomplished by a violation of the territory of the United States. The letter of the British minister, while attempting to justify that violation upon the ground of a pressing and overruling necessity, admitting, nevertheless, that, even if justifiable, an apology was due for it, and accompanying this acknowledgment with assurances of the sacred regard of this Government for the inviolability of national territory, has seemed to me sufficient to warrant forbearance from any further remonstrance against what took place as an aggression on the soil and territory of the country."

President Tyler's Message, transmitting the Treaty of Washington to the Senate, Aug. 11, 1842; 6 Webster's Works, 355.

For notices of the capture of the Caroline, see President Van Buren's Messages of April 5, 1838, Feb. 6, 1839, Dec. 31, 1840; House Ex. Doc. 302, 25th Cong., 2d sess.; House Ex. Doc. No. 183, 25th Cong., 3d sess.; House Ex. Doc. No. 33, 26th Cong., 2d sess. For correspondence, see Brit. and For. State Pap. for 1841–'2, vol. 30, 173. For discussions of the case, see 1 Phil. Int. Law, 3d ed., 315; 3d *id.*, 60; Hall's Int. Law, 246, 283.

Mr. Webster's report of Jan. 7, 1843, giving correspondence to that date in respect to the steamer Caroline, is in Senate Doc. No. 99, 27th Cong., 3d sess.

Mr. J. Q. Adams, when discussing the Caroline case in the House of Representatives, said:

"I take it that the late affair of the Caroline was in hostile array against the British Government, and that the parties concerned in

it were employed in acts of war against it; and I do not subscribe to the very learned opinion of the chief justice of the supreme court of New York (not, I hear, the chief justice, but a judge of the supreme court) that there was no act of war committed. Nor do I subscribe to it that every nation goes to war only on issuing a declaration or proclamation of war. This is not the fact. Nations often wage war for years without issuing any declaration of war. The question is not here upon a declaration of war, but acts of war, and I say that in the judgment of all impartial men of other nations we shall be held, as a nation, responsible; that the Caroline, then, was in a state of war against Great Britain, for purposes of war, and the worst kind of war—to sustain an insurrection. I will not say rebellion, because rebellion is a crime, and because I have heard them talked of as patriots."

2 Benton's Thirty Years in the Senate, 289. See further on this point, *supra*, § 21.

Mr. Benton, in commenting on Mr. Adams's speech, said:

"The war ground they (Mr. Adams and Mr. Cushing) assumed could only apply between Great Britain and the insurgents. She had no war with the United States. The attack on the Caroline was an invasion of the territory of a neutral power at peace with the invader. That is a liberty not allowed by the law of nations; not allowed by the concern which any nation, even the most inconsiderable, feels for its own safety and its own self-respect. * * No power allows it. That we have seen in our own day in the case of the Poles, in their last insurrection, driven across the Austrian frontier by the Russians, and the pursuers stopped at the line, and the fugitive Poles protected the instant they had crossed it; and in case of the late Hungarian revolt, in which the fugitive Hungarians, driven across the Turkish frontier, were protected from pursuit."

2 Benton, *ut supra*, 290. The subject of the Caroline case, so far as concerns the prosecution of McLeod, is discussed in Whart. Cr. Law, 9th ed., §§ 62, 283, 493. As to authorization of Government as a defense in such cases, see *supra*, § 21; *infra*, §§ 338, 341.

Lord Campbell, in his autobiography (Life, 2d ed., 1881, p. 19), says: "The affair of the Caroline was much more difficult. Even Lord Grey told me he thought we were quite wrong in what we had done. But assuming the facts that the Caroline had been engaged, and when seized by us was still engaged, in carrying supplies and military stores from the American side of the river to the rebels in Navy Island, part of the British territory; that this was permitted, and could not be prevented, by the American authorities, I was clearly of opinion that, although she lay on the American side of the river when she was seized, we had a clear right to seize and destroy her, just as we might have taken a battery erected by the rebels on the American shore, the guns of which were fired against the Queen's troops in Navy Island. I wrote a long justification of our Government, and thus supplied the arguments used by our foreign secretary, till the Ashburton treaty hushed up the dispute."

Mr. Abdy (Abdy's Kent, 1878, p. 148) sums up his notice of the Caroline case as follows: "Her Majesty's Government having stated their regret at the violation of territory complained of, and at the omission or neglect to explain or apologize for that violation at the time of its occurrence, and having frankly explained the circumstances of the event, attributable entirely to the necessity of the case, the Gov-

ernment of the United States expressed their satisfaction at this exhibition of good feeling and their readiness to receive these acknowledgments and assurances in the conciliatory spirit in which they were offered."

See also 2 Benton's Thirty Years in the Senate, 455.

(*d*) GREYTOWN.

§ 50*d*.

Greytown was a port on the Mosquito coast, in which some United States citizens resided. These citizens, and others interested with them in business, were subjected to gross indignities and injuries by the local authorities, who were British, but who professed to act under authority from the king or chief of the Mosquito Islands. The parties injured accordingly appealed to the commander of the United States sloop-of-war Cyane, then lying near that port, for protection. To punish the authorities for their action, he bombarded the town. For this act he was denounced by the British residents, who claimed that the British Government had a protectorate over that region. His action was sustained by the Government of the United States, the ground being the necessity of punishing in this way a great wrong to citizens of the United States, and preventing its continuance.

Infra, § 224.
As to British title to this coast, see *infra*, § 295.

(*e*) BORDER RAIDERS.

§ 50*e*.

"In reply to Mr. Gorostiza's informal note of the 28th ultimo, Mr. Forsyth has the honor to state that, except in case of necessity, General Gaines will not occupy ground not indisputably within the limits of the United States. In case of necessity, whether the possession of the ground he may occupy is now or has heretofore been claimed by Mexico, cannot be made a question by that officer. He will take it to perform his duties to the United States and to fulfill the obligations of the United States to Mexico. The just and friendly purpose for which he does occupy it, if he should do so, being beforehand explained to Mexico, it is expected will prevent either belief or suspicion of any hostile or equivocal design on his part. It is not intended to be the assertion of a right of property or possession."

Mr. Forsyth, Sec. of State, to Mr. Gorostiza, May 3, 1836; MSS. Notes, Mexico.

"To effect one of the great objects for which General Gaines is sent to the frontier, *i. e.*, to fulfill our treaty with Mexico by protecting its territory against the Indians within the United States, the troops of the United States might justly be sent into the heart of Mexico, and their presence, instead of being complained of, would be the strongest evidence of fidelity to engagements and friendship to Mexico. Nor could the good faith and friendship of the act be doubted if troops of the

United States were sent into the Mexican territory to prevent embodied Mexican Indians justly suspected of such design from assailing the frontier settlements of the United States."

Mr. Forsyth, Sec. of State, to Mr. Gorostiza, May 10, 1836; MSS. Notes, Mexico.

"Temporary invasion of the territory of an adjoining country, when necessary to prevent and check crime, 'rests upon principles of the law of nations entirely distinct from those on which war is justified—upon the immutable principles of self-defense—upon the principles which justify decisive measures of precautions to prevent irreparable evil to our own or to a neighboring people.'"

Mr. Forsyth, Sec. of State, to Mr. Ellis, Dec. 10, 1836; MSS. Inst., Mex.

"When necessary to maintain order and to comply with treaty obligations to Mexico, the troops of the United States are entitled to cross the boundary between the United States and Mexico, and so when necessary to punish Mexican marauding Indians or to prevent their incursions."

Mr. Forsyth, Sec. of State, to Mr. Ellis, Dec. 10, 1836; MSS. Inst., Mex.

"Compaints of unfounded seizures of property by Mexican authorities on the Rio Grande frontier have recently been addressed to this Department by citizens of the United States. They inveigh against arbitrary acts of the military and corrupt proceedings of the judicial officers of Mexico in that quarter. This Government is not disposed to connive at any infractions of the laws of Mexico by our citizens, but it has a right to expect that if they are charged with a violation of those laws the cases will be fairly and impartially tried and decided. If a contrary course should be adopted it may be difficult to restrain the aggrieved parties from seeking reparation by acts of violence against the property of Mexicans on the southern bank of the Rio Grande."

Mr. Webster, Sec. of State, to Mr. Smith, May 5, 1851; MSS. Inst., Mexico.

"If Mexican Indians whom Mexico is bound to restrain are permitted to cross its border and commit depredations in the United States, they may be chased across the border and then punished."

Mr. Marcy, Sec. of State, to Mr. Almonte, Feb. 4, 1856; MSS. Notes, Mex.

"But there is another view of our relations with Mexico, arising from the unhappy condition of affairs along our southwestern frontier, which demands immediate attention. In that remote region where there are but few white inhabitants, large bands of hostile and predatory Indians roam promiscuously over the Mexican States of Chihuahua and Sonora, and our adjoining Territories. The local governments of these states are perfectly helpless, and are kept in a state of constant alarm by the Indians. They have not the power, if they possessed the will, even to restrain lawless Mexicans from passing the border and committing dep-

redations on our remote settlers. A state of anarchy and violence prevails throughout that distant frontier. The laws are a dead letter, and life and property wholy insecure. For this reason the settlement of Arizona is arrested, whilst it is of great importance that a chain of inhabitants should extend all along its southern border sufficient for their own protection and that of the United States mail passing to and from California. Well-founded apprehensions are now entertained that the Indians and wandering Mexicans equally lawless, may break up the important stage and postal communication recently established between our Atlantic and Pacific possessions. This passes very near to the Mexican boundary throughout the whole length of Arizona. I can imagine no possible remedy for these evils, and no mode of restoring law and order on that remote and unsettled frontier, but for the Government of the United States to assume a temporary protectorate over the northern portions of Chihuahua and Sonora, and to establish military posts within the same—and this I earnestly recommend to Congress. This protection may be withdrawn as soon as local governments shall be established in these Mexican States, capable of performing their duties to the United States, restraining the lawless and preserving peace along the border."

President Buchanan's Second Annual Message, 1858.

"It is a gratification to be able to announce that, through the judicious and energetic action of the military commanders of the two nations on each side of the Rio Grande, under the instructions of their respective Governments, raids and depredations have greatly decreased, and, in the localities where formerly most destructive, have now almost wholly ceased. In view of this result, I entertain a confident expectation that the prevalence of quiet on the border will soon become so assured as to justify a modification of the present orders to our military commanders as to crossing the border, without encouraging such disturbances as would endanger the peace of the two countries."

President Hayes' Third Annual Message, 1879. See App., Vol. III, § 50e.

"In my last annual message I expressed the hope that the prevalence of quiet on the border between this country and Mexico would soon become so assured as to justify the modification of the orders, then in force, to our military commanders in regard to crossing the frontier, without encouraging such disturbances as would endanger the peace of the two countries. Events moved in accordance with these expectations, and the orders were accordingly withdrawn, to the entire satisfaction of our own citizens and the Mexican Government. Subsequently the peace of the border was again disturbed by a savage foray, under the command of the Chief Victorio, but, by the combined and harmonious action of the military forces of both countries, his band has been broken up and substantially destroyed."

President Hayes' Fourth Annual Message, 1880.

"A recent agreement with Mexico provides for the crossing of the frontier by the armed forces of either country in pursuit of hostile Indians. In my message of last year I called attention to the prevalent lawlessness upon the borders and to the necessity of legislation for its suppression. I again invite the attention of Congress to the subject.

"A partial relief from these mischiefs has been sought in a convention, which now awaits the approval of the Senate, as does also another touching the establishment of the international boundary between the United States and Mexico. If the latter is ratified, the action of Congress will be required for establishing suitable commissions of survey. The boundary dispute between Mexico and Guatemala, which led this Government to proffer its friendly counsels to both parties, has been amicably settled."

President Arthur's Second Annual Message, 1882.

"The provisions for the reciprocal crossing of the frontier by the troops in pursuit of hostile Indians have been prolonged for another year. The operations of the forces of both Governments against these savages have been successful, and several of their most dangerous bands have been captured or dispersed by the skill and valor of United States and Mexican soldiers fighting in a common cause."

President's Arthur's Third Annual Message, 1883.

"The first duty of a Government is to protect life and property. This is a paramount obligation. For this governments are instituted, and governments neglecting or failing to perform it become worse than useless. This duty the Government of the United States has determined to perform to the extent of its power toward its citizens on the border. It is not solicitous, it never has been, about the methods or ways in which that protection shall be accomplished, whether by formal treaty stipulation or by informal convention; whether by the action of judicial tribunals or that of military forces. Protection *in fact* to American lives and property is the sole point upon which the United States are tenacious. In securing it they have a right to ask the co-operation of their sister Republic. So far, the authorities of Mexico, military and civil, in the vicinity of the border, appear not only to take no steps to effectively check the raids or punish the raiders, but demur and object to steps taken by the United States.

"I am not unmindful of the fact that, as you have repeatedly reported, there is reason to believe that the Mexican Government really desires to check these disorders. According to the views you have presented, its statesmen are believed to be sagacious and patriotic, and well disposed to comply with all international obligations. But, as you represent, they encounter, or apprehend that they may encounter, a hostile public feeling adverse to the United States, especially in these border

localities, thwarting their best intentions and efforts. It is greatly to be regretted that such a state of perverted public feeling should exist. But its existence does not exonerate the Mexican Government from any obligation under international law. Still less does it relieve this Government from its duties to guard the welfare of the American people. The United States Government cannot allow marauding bands to establish themselves upon its borders with liberty to invade and plunder United States territory with impunity, and then, when pursued, to take refuge across the Rio Grande under protection of the plea of the integrity of the soil of the Mexican Republic."

Mr. Evarts, Sec. of State, to Mr. Foster, August 13, 1878; MSS. Inst., Mexico; For. Rel., 1878.

See, further, Mr. Evarts to Mr. Morgan, June 26, 1880; to Mr. Navarro, July 27, 1880, Oct. 6, 1880; Mr. Frelinghuysen to Mr. Morgan, June 6, 1882; to Mr. Romero, July 6, 1882; Mr. Davis to Mr. Romero, May 7, 1883.

An incursion into the territory of Mexico for the purpose of dispersing a band of Indian marauders is, if necessary, not a violation of the law of nations.

Mr. Fish, Sec. of State, to Mr. Belknap, Jan. 22, 1874; MSS. Dom. Let. See Mr. Fish to Mr. Belknap, Aug. 21, 1874.

As to right of passage of troops through foreign country, see *supra*, §§ 18, 19.

As to treaties for troops to cross border in pursuit, see *supra*, § 18.

In 2 Dix's Life, pp. 110 *ff.*, it is maintained that the United States would be justified in crossing the Canada border in order to arrest Canadian marauders whom the Canadian authorities neglected or refused to repress.

The following orders bear on this question:

HEADQUARTERS DEPARTMENT OF THE EAST,
New York City, December 14, 1864.

General Orders No. 97.

Information having been received at these headquarters that *the rebel marauders who were guilty of murder and robbery at Saint Albans have been discharged from arrest, and that other enterprises of a like character are actually in preparation in Canada, the Commanding General* deems it due to the people of the frontier towns to adopt the most prompt and efficient measures for the security of their lives and property.

All military commanders on the frontiers are therefore instructed, in case further acts of depredation and murder are attempted, whether by marauders or persons acting under commissions from the rebel authorities at Richmond, to shoot down the perpetrators, if possible, while in the commission of their crimes; *or, if it be necessary, with a view to their capture, to cross the boundary between the United States and Canada, said commanders are hereby directed to pursue them wherever they may take refuge, and if captured they are under no circumstances to be surrendered, but are to be sent to these headquarters for trial and punishment by martial law.*

The major-general commanding the department will not hesitate to exercise to the fullest extent the authority he possesses, under the rules of law recognized by all civilized states, in regard to persons organizing hostile expeditions within neutral territory and fleeing to it for an asylum after committing acts of depredation within our own, such an exercise of authority having become indispensable to protect our cities and towns from incendiarism and our people from robbery and murder.

It is earnestly hoped that the inhabitants of our frontier districts will abstain from all acts of retaliation on account of the outrages committed by rebel marauders, and that the proper measures of redress will be left to the action of the public authorities.

By command of Major-General Dix.

D. T. VAN BUREN,
Colonel and Assistant Adjutant-General.

Official.

WRIGHT RIVES, *Aid-de-Camp.*

HEADQUARTERS DEPARTMENT OF THE EAST,
New York City, December 17, 1864.

General Orders No. 100.

The President of the United States having disapproved of that portion of Department General Orders No. 97, current series, which instructs all military commanders on the frontier, in certain cases therein specified, to cross the boundary line between the United States and Canada, and directs pursuit into neutral territory, the said instruction is hereby revoked.

In case, therefore, of any future marauding expedition into our territory from Canada, military commanders on the frontiers will report to these headquarters for orders before crossing the boundary line in pursuit of the guilty parties.

By command of Major-General Dix.

D. T. VAN BUREN,
Colonel and Assistant Adjutant-General.

Official.

G. VON ERIKSTEDT, *Aid-de-Camp.*

See Bernard's Neutrality of Gr. Brit., 185, where the above orders are noticed.

(7) EXPLORATIONS IN BARBAROUS LANDS (*e. g.*, THE CONGO).

§ 51.

"The instructions of this Government governing your course in that conference are very brief. Without more definite knowledge of the points to be brought before that conference for discussion, and of the extent to which it may feel called upon to take cognizance of existing questions of territorial jurisdiction on the west coast of Africa, and especially at the mouth of the Congo, much must be left to your discretion. The subject is one with which you became familiar before your departure for your present post, in connection with the action of Congress and the declaration of the Executive of the United States looking to a free participation in the trade and intercourse of that newly-opened country by the vessels and citizens of the United States. You are aware that it is not our policy to intervene in the affairs of foreign nations to decide territorial questions between them. It is not, however, understood from the tenor of the German invitation that any such decisive attitude is likely to be assumed by the conference, and beyond taking cognizance of such matters of fact in relation to territorial jurisdiction in that region, as may be brought before it to aid in an intelli-

gent discussion of the three points embraced in the German note of invitation, it is not seen that the conference can take upon itself any greater power of intervention or control than could properly be assumed by the individual nations represented thereat."

Mr. Frelinghuysen, Sec. of State, to Mr. Kasson, Oct. 17, 1884; MSS. Inst., Germany.

"The rich and populous valley of the Congo is being opened to commerce by a society called the International African Association, of which the King of the Belgians is the president and a citizen of the United States the chief executive officer. Large tracts of territory have been ceded to the association by native chiefs, roads have been opened, steamboats placed on the river, and the *nuclei* of states established at twenty-two stations under one flag, which offers freedom to commerce and prohibits the slave trade. The objects of the society are philanthropic. It does not aim at permanent political control, but seeks the neutrality of the valley. The United States cannot be indifferent to this work, nor to the interests of their citizens involved in it. It may become advisable for us to co-operate with other commercial powers in promoting the rights of trade and residence in the Congo Valley free from the interference or political control of any one nation."

President Arthur's Third Annual Message, 1883.

"The Independent State of Congo has been organized as a Government, under the sovereignty of His Majesty the King of the Belgians, who assumes its chief magistracy in his personal character only, without making a new state dependency of Belgium. It is fortunate that a benighted region, owing all it has of quickening civilization to the beneficence and philanthropic spirit of this monarch, should have the advantage and security of his benevolent supervision.

"The action taken by this Government last year in being the first to recognize the flag of the International Association of the Congo has been followed by formal recognition of the new nationality which succeeds to its sovereign powers.

"A conference of delegates of the principal commercial nations was held at Berlin last winter to discuss methods whereby the Congo Basin might be kept open to the world's trade. Delegates attended on behalf of the United States on the understanding that their part should be merely deliberative, without imparting to the results any binding character, so far as the United States was concerned. This reserve was due to the indisposition of this Government to share in any disposal by an international congress of jurisdictional questions in remote foreign territories. The results of the conference were embodied in a formal act of the nature of an international convention, which laid down certain obligations purporting to be binding on the signatories, subject to rati-

fication within one year. Notwithstanding the reservation under which the delegates of the United States attended, their signatures were attached to the general act in the same manner as those of the plenipotentiaries of other Governments, thus making the United States appear, without reserve or qualification, as signatories to a joint international engagement imposing on the signers the conservation of the territorial integrity of distant regions where we have no established interests or control.

"This Government does not, however, regard its reservation of liberty of action in the premises as at all impaired; and holding that an engagement to share in the obligation of enforcing neutrality in the remote valley of the Congo would be an alliance whose responsibilities we are not in a position to assume, I abstain from asking the sanction of the Senate to that general act.

"The correspondence will be laid before you, and the instructive and interesting report of the agent sent by this Government to the Congo country, and his recommendations for the establishment of commercial agencies on the African coast, are also submitted for your consideration."

President Cleveland's First Annual Message, 1885.

"As you are aware, the Government of the United States, in authorizing the attendance of Mr. Kasson as a delegate to the conference of Berlin, and of Mr. Sandford as an associate delegate, did so under expressed reservations, among which was the understanding that those gentlemen were without plenipotentiary powers, and that this Government, in its sovereign discretion, reserved wholly the right thereafter to accede or withhold its accession to the results of that conference.

"It appears, however, that their signatures were attached to the general act in the same manner as those of the plenipotentiaries of other Governments, and that the United States are thus made to appear as signatories to a general international treaty, imposing on the signatories a common duty in respect of the conservation of the territorial integrity and neutrality of distant regions where this Government has no established interests or control of any kind.

"This Government does not, however, regard its prior and entire reservation of liberty of action in the premises as at all thereby impaired. And until the United States shall, by subsequent accession and ratification of the general act of the conference of Berlin in the manner therein provided, and according to their constitutional forms, become a party to the stipulations thereof, it will be impossible to determine the due and proper weight to be given by this Government to the declaration and claim which is thus communicated by Mr. van Eetvelde on behalf of the Independent State of the Congo. But this reservation is wholly distinct from the recognition of the sovereign status of the Independent

State of the Congo, which does not rest upon the conventional arrangements contemplated by the conference of Berlin."

Mr. Bayard, Sec. of State, to Mr. Tree, Sept. 11, 1885; MSS. Inst., Belg.; For. Rel., 1885.

For correspondence on this topic see For. Rel., 1885, 57 *ff.*

As to agency to the Congo, see Mr. Frelinghuysen to Mr. Tisdel, Sept. 8, 1884; MSS. Notes, Special Missions.

See discussion of the Congo question in review by M. de Martens; Revue de Droit Int., 1886, 113.

"The President having deemed it inexpedient to submit the general act of the Berlin [Congo] Conference to the Senate with a view to obtain the constitutional concurrence of that body, and having announced his views thereon in his annual message of the 8th of December last (of which I inclose copies for your convenient information), I am unprepared to ask, through the United States minister at Berlin, as your note suggests, that the term for the exchange of ratifications be kept open in favor of the United States. Nor am I at present prepared to make such announcement to your Government as might be construed to be a formal and final rejection of the general act by the United States."

Mr. Bayard, Sec. of State, to Mr. von Alvensleben, April 16, 1886; MSS. Notes, Germany.

(8) Intercession in extreme cases of political offenders.

§ 52.

On March 15, 1793, Mr. Jefferson, Secretary of State, instructed Mr. Gouverneur Morris, minister to France, to say, whenever it would be effectual, to any foreign Government by whom General La Fayette might be held in custody, "that our Government and nation, faithful in their attachments to this gentleman for the services he has rendered them, feel a lively interest in his welfare, and will view his liberation as a mark of consideration and friendship for the United States, and as a new motive for esteem and a reciprocation of kind offices towards the power to whom they shall be indebted for this act."

This application, however, was considered afterwards to be personal rather than official.

"The uniform policy of this Government has been not to interfere in the domestic affairs of other nations. This policy was wisely established by President Washington, who carried it so far as to refuse to interfere officially for the release of La Fayette, his friend and companion in arms, who was incarcerated for many years in the prison at Olmütz."

Mr. Crittenden, Acting Sec. of State, to Mr. Pruyn, Oct. 8, 1851; MSS. Dom Let.

The Government of the United States will, through the Secretary of State, interpose its good offices for the alleviation of the punishment

of citizens of the United States convicted in a foreign country of political offenses against such country.

Mr. Webster, Sec. of State, to Mr. Cushing, Aug. 27, 1842; MSS. Dom. Let.

The laws of Turkey "whereby the penalty of death is denounced against the Mussulman who embraces Christianity," however outrageous, do not justify an appeal from this Government for their repeal.

Mr. Marcy, Sec. of State, to Mr. Spence, Dec. 28, 1855; MSS. Inst., Turkey.

No intercession will be offered when it involves an impeachment of the character of the Government addressed. Hence, in December 8, 1858, the Department declined to address the Papal Government in reference to certain acts of alleged cruelty permitted in Bologna.

Mr. Cass, Sec. of State, to Mr. Hart, Dec. 8, 1858; MSS. Dom. Let.

The same position was taken by Mr. Cass on Jan. 4, 1859, in declining to intervene in behalf of the "Mortara boy," alleged to have been abducted and forcibly baptized by Papal authorities.

"The capture of the Prince Maximilian in Queretaro by the republican armies of Mexico seems probable. The reported severity practiced on the prisoners taken at Zacatecas excites apprehension that similar severity may be practiced in the case of the prince and his alien troops. Such severities would be injurious to the national cause of Mexico and to the republican system throughout the world.

"You will communicate to President Juarez promptly, and by effectual means, the desire of this Government, that in case of capture the prince and his supporters may receive the humane treatment accorded by civilized nations to prisoners of war."

Mr. Seward, Sec. of State, to Mr. Campbell, Apr. 6, 1867; MSS. Inst., Mexico.

"The judgment of mankind is that in revolutionary movements which are carried on by large masses, and which appeal to popular sympathy, capital executions of individuals who fall within the power of the Government are unwise and often unjust. Such severity, when practiced upon a citizen of a foreign state, excites a new sympathy by enlisting feelings of nationality and patriotism.

"The fellow-citizens at home of the sufferer in a foreign country naturally incline to believe that the just and generous principle to which I have referred is violated in his case. The soundness of this principle is quite easily understood after the revolutionary movement is ended, although it is difficult to accept the truth in the midst of revolutionary terror or violence. When the President of the United States dismissed the prosecutions in the United States courts of the so-called Fenians who attempted an unlawful and forbidden invasion of Canada, and returned them to their homes at the expense of the Government, and at the same time obtained, through the wise counsels of Sir Frederick Bruce and the Governor-General of Canada, a mitigation of the capital punishments adjudged against those who were convicted in the Cana-

dian courts, the President adopted proceedings which have practically assured the continuance of peace upon the Canadian border. It was believed here that similar clemency could be practiced in the Manchester case with benign results. Your dispatch leads us to believe that Her Majesty's Government was so thoroughly convinced of the necessity of pursuing a different course in that case that further interposition than that which you adopted would have been unavailing and injurious to citizens of the United States. Certainly it belonged to the British Government to decide whether the principle which we invoked could be wisely applied in the Manchester case."

Mr. Seward, Sec. of State, to Mr. Adams, Dec. 9, 1867; MSS. Inst., Great Britain.

"Although this [a proclamation by the Governor-General of Cuba, threatening death to insurgents taken prisoners with arms in their hands] is a measure touching the internal affairs of a country which is within the exclusive jurisdiction of the Government of that country, it seems to be of a character so inhuman and so much at variance with the practice of Christian and civilized states in modern times under similar circumstances, that this Government regards it as its duty merely as a friend of Spain, to protest and remonstrate against the carrying it into effect."

Mr. Fish, Sec. of State, to Mr. Roberts, Jan. 8, 1872; MSS. Notes, Spain.

For Mr. Webster's letter of intercession for parties taken on Lopes expedition, see 6 Webster's Works, 515, and see Sen. Ex. Doc. No. 41, 31st Cong., 2d sess.; House Ex. Doc. No. 2, 32d Cong., 1st sess.; *id.*, Ex. Doc. No. 16.

As to interposition of the United States in 1851, bringing Hungarian exiles from Turkey to the United States in a national ship, see *supra*, § 48; 2 Curtis's Life of Webster, 560–71.

As to interposition with the British Government in favor of certain Fenian prisoners captured in Canada, see Mr. Seward, Report to the President, July 26, 1866; MSS. Report Book No. 9. (See also House Ex. Doc. No. 154, 39th Cong., 1st sess.)

For the application of Mr. Fish, Sec. of State, to the Spanish Government for the release of Santa Rosa, in 1872, see Mr. Fish to Admiral Polo, Dec. 17, 1872; MSS. Notes, Spain; For. Rel., 1873.

"Mr. Frelinghuysen informed Mr. Lowell of the action of the House of Representatives, as contained in the resolution of December 10, repeated his former instruction to consider the citizenship of O'Donnell established, and concluded by saying:

"'There being in Great Britain no judicial examination on appeal of the proceedings at a criminal trial, possible errors can only be corrected through a new trial or by executive action upon the sentence. Therefore this Government is anxious that such careful examination be given to the proceedings in this case as to discover error, should one have been committed. You are therefore directed by the President to request a delay of the execution of the sentence, and that a careful exam-

ination of the case be made by Her Majesty's Government, and that the prisoner's counsel be permitted to present any alleged points of error.'"

Telegram, Mr. Frelinghuysen, Sec. of State, to Mr. Lowell, Dec. 11, 1883; MSS. Inst., Gr. Brit.; For. Rel., 1883.

As to joint resolution of Congress for intercession in Condon's case, see *infra*, § 230.

(9) INTERNATIONAL COURTS IN SEMICIVILIZED OR BARBAROUS LANDS.

§ 53.

This subject, so far as concerns the action of consular courts, is hereafter considered. *Infra*, § 125.

"I have the honor to acknowledge the receipt of Sir Edward Thornton's note of the 12th ultimo, in relation to the proposed commission of liquidation for the settlement of the Egyptian debts, which has resulted from the negotiations carried on for some time between the Governments of Great Britain, Austria-Hungary, France, Germany, and Italy, and have given the most considerate attention to the statements therein presented respecting the Khedival decree of March 31 last, and the declaration of the same date signed by the representatives of the five powers above mentioned, of which documents you kindly furnish me with copies.

"It appears from those documents, taken conjointly with your statements, that the five powers, whose subjects own nearly the whole of the Egyptian debt, have organized among themselves a commission of liquidation for the benefit of the creditors, whether large or small, whose interests are confided to its prudence; that the same powers have united in a declaration to the end of giving force of law to the decisions which the commission shall have arrived at; that the five Cabinets are desirous that the decisions of the commission should hold applicable with like force to creditors belonging to powers which, while not represented in the preliminary negotiations for the commission, or in the commission itself, have concurred in establishing the legal administration of Egypt by participating in the establishment of the mixed tribunals; that to this end the adherence of such powers to the work of the commission is requested, in order that those tribunals may have unimpeded jurisdiction over cases of rescinded contracts and other questions which may arise under the operations of the commission; and that you are instructed by your Government to ask the formal adhesion of that of the United States to the joint declaration referred to. Hence you ask that I will acquaint you, so soon as it may be in my power, with the views of this Government upon the subject.

"The important question to which the attention of this Government is thus called had already had careful consideration, based upon the application directly made to it by that of His Highness the Khedive through

the United States agent at Cairo, and also upon the approaches made to it by that of France in the sense of obtaining the adhesion of the United States to the scheme. The first results of that consideration were not, on the whole, favorable to the concurrence of the United States in the proposal of the foreign powers, and the expressed opinion of the Department was that the United States Government did not feel called upon to accept, in advance, as binding upon its citizens, the action of a commission in the organization of which neither it nor they had had any part. Although, so far as was known, the interests of American citizens concerned in contracts and like engagements with the Egyptian Government were not so numerous or important as to make participation in the organization of the commission an indispensable requisite, yet it was regarded as proper to leave undecided, for the time being at least, the question of the acceptability of such action as that commission might hereafter take so far as concerned its operation upon the rights of citizens of the United States, and this view was strengthened by the natural desire of the United States to take no action which, on the one hand, might be tantamount to enforcing its own procedure and remedies, in conjunction with other powers, upon the Khedival Government in matters of its own internal economy, and, on the other, might forego the reservation of the rights of United States citizens in their direct relations to the Egyptian Government, in case the disparagement of such rights should call for diplomatic representations in their defense.

"In leaning to the adoption of such a course on the part of the United States, it was, however, entirely foreign to the purposes of this Government to interfere with, or embarrass in any way, the financial relations of the Khedive toward the other powers, or the adjustment, by whatever means it and they might determine, of such obligations as might have arisen and become matters of dispute or compromise between them. It was not perceived that the attitude of discreet reserve, which thus so properly commended itself to this Government in respect of a matter wherein it, as a Government, had no direct concern, and wherein the interests of its citizens were amply guarded by the direct relations it maintains so happily with the Government of the Khedive, could be regarded as interfering with the entire freedom of that Government to make any administrative adjustment of its financial relations with Governments having representation in such administration.

"While holding these views, therefore, and expressing them frankly through the medium of its diplomatic representation at Cairo, the Government of the United States held itself ready to receive and consider in the most friendly spirit any indications which the Khedive's Government might present of embarrassment caused to it on this account.

"Matters being in this state, advices from the representative of the United States at Cairo were received, exhibiting the apparent interest

of the Egyptian Government itself in the solutions reached by the commission of liquidation, and soliciting in the most unequivocal and earnest manner the concurrence of the United States in order to remove the embarrassments which it was represented would flow from the attempt on the part of the Khedive's Government to apply, through the tribunals, the decisions of the commission without the adhesion of the powers represented in the organization of those tribunals; and these considerations induced this Government to waive its reserve and accord its adhesion to the administrative plan upon which the Government of His Highness the Khedive seemed to put so much value.

"The diplomatic agent of the United States at Cairo was accordingly instructed, on the 17th instant, by telegraph, to give the adhesion of this Government, if that of Egypt regarded it as material to the scheme, and I am since in receipt of advices that he has done so."

Mr. Evarts, Sec. of State, to Mr. Drummond, July 30, 1880; MSS. Notes, Gr. Brit.; For. Rel., 1880.

A similar communication was addressed, the same day, to the representatives of Austria-Hungary, France, Germany, and Italy.

As to institution of international courts in Egypt, see Mr. Seward, Sec. of State, to Mr. Adams, April 13, 1868; MSS. Inst., Great Britain.

(10) GOOD OFFICES FOR MISSIONARIES ABROAD.

§ 54.

Missionaries sent out by religious communions in the United States to Mohammedan or pagan lands "are entitled to all the protection which the law of nations allows the Government to extend to citizens who reside in foreign countries in the pursuit of their lawful avocations, but it would be a source of endless embarrassment to attempt to reverse the decisions of regular tribunals" when such missionaries are condemned for teaching doctrines not tolerated by the secular power, in cases where there is no treaty guarantee for their toleration.

Mr. Everett, Sec. of State, to Mr. Marsh, Feb. 5, 1853; MSS. Inst., Turkey.

The Government of the United States, while protecting citizens of the United States in Turkey so far as concerns their international rights, cannot in any way assume a protectorship of Christian communions in Turkey, as is done by some European powers, nor in any way undertake to determine their dissensions.

Mr. Cass, Sec. of State, to Mr. Williams, Oct. 22, 1860; MSS. Inst., Turkey.

"It is a matter of regret that the Christian missionaries of the United States and of Hawaii to the Micronesian group should have experienced any obstacle in the prosecution of their calling, and especially that they should have been wronged in their person and property by the savage aborigines. It is hoped that the vessel of war which, it is understood, has been ordered thither, will have the effect of preventing any further

outrages upon our citizens. Our right, however, to demand redress for injuries to subjects of the Hawaiian Kingdom, independent, though a friendly state, may be regarded as questionable. We should, consequently, prefer not to direct an application to be made in their behalf, notwithstanding the connection between missionaries of this country and those of Hawaii, adverted to by Mr. Harris in his note to you of the 26th February. Still, as the native inhabitants of Micronesia are not understood to acknowledge the obligations of the law of nations, it will be competent for, and there would be no objection to, a United States naval commander interposing in behalf of any subjects of the Hawaiian Kingdom to protect them against any further injuries with which they might be threatened during his abode in Micronesia."

Mr. Fish, Sec. of State, to Mr. Peirce, Apr. 6, 1870; MSS. Inst., Hawaii.

The minister of the United States at Constantinople may employ his good offices with the Turkish authorities to obtain for the Syrian Protestant College authority to grant medical degrees. This privilege, however, is not to be claimed as a matter of right, either under public law or treaty, but merely as a mark of good-will.

Mr. Fish, Sec. of State, to Mr. Brown, July 31, 1871; MSS. Inst., Turkey.

"I have received your dispatch No. 28, of the 6th ultimo, inclosing correspondence between yourself and the vice-consul-general at Beirut, in regard to the 'amount of protection, if any, consuls can give to the teachers, pupils, and natives who have been converted through the ministry of the American missionaries, from persecution on account of their religious belief.'

"In reply, I have to state that the general position and principles advanced by you on the subject are correct, and are within the provision of the treaty between the United States and Turkey, and your communication to the vice-consul-general is approved."

Mr. Fish, Sec. of State, to Mr. Brown, Dec. 5, 1871; MSS. Inst., Turkey; For. Rel., 1872.

This instruction was in response to the following:

No. 457.

Mr. Brown to Mr. Fish.

No. 28.] LEGATION OF THE UNITED STATES,
Constantinople, November 6, 1871. (Received December 2.)

"SIR: I have the honor to transmit to the Department copies of a correspondence with the consulate-general at Beirut, and to request most respectfully your instructions on the subject to which it relates.

"I have very great respect for all of the American missionaries in all parts of this country, and many of them are personal friends. They are fully entitled to all the protection which the legation can secure for them. The opinions which I have expressed in my reply to the vice-consul-general are based upon my experience and knowledge of the feelings of the Turkish Government.

I have, &c., JOHN P. BROWN.

Mr. Brown to Mr. Hay.

LEGATION OF THE UNITED STATES,
Constantinople, November 4, 1871.

SIR: I have had the honor to receive your dispatch of the 11th October, asking instructions from me on the subject of the amount of protection, if any, consuls may give to the teachers, pupils, and natives who have been converted through the ministry of the American missionaries, from persecution on account of their religious belief.

As I am not in possession of any instructions from the Department of State on the subject, and as it is one that must greatly interest the missionaries in Syria, I shall now transmit to it a copy of your dispatch and of my reply, for its consideration. It is for the first time, that I am aware of, that such a request has been submitted to the legation from missionaries in any part of Turkey; and I must regret that anything has now occurred to render it necessary.

It seems to me that much as the Government of the United States may be interested in the principle of religious liberty and toleration in all parts of the world, the question is one of so much delicacy, when it relates to other countries and Governments, as to prevent its direct official interference to sustain it.

By reference to the fifth article of the treaty, you will perceive that it has been established that the legation and consulates of the United States shall not protect Ottoman subjects, either openly or secretly, &c., and the same principle you will find repeated in your berat or exequatur of the consul-general. I do not see how this stipulation can be departed from on the ground of religious toleration in this country. Although the Ottoman Government tolerates the labors of missionaries among its subjects, it does so unwillingly, and is not disposed to favor or promote them. With this fact before me I cannot instruct you to claim a right to give your official protection to the individuals aforestated. I believe the local authorities will not allow it. The question will then be referred by them and yourself here, and I shall have invited upon the legation a question of an untenable nature. The recent case of the teacher of the Rev. Mr. Jessup offers an evidence of what I state. I certainly do not advise you from refraining to offer your officious solicitations in behalf of any clearly established cases of religious persecution, be the sufferer whomever he may, or whatever his faith, and from invoking the well-known liberal principles of the Ottoman Government in such matters; but this should be done with much discretion. It would be certainly an error to interfere in the affairs of the individuals you allude to disconnected with religion.

You are misinformed on the subject of any "Mussulman who, for having embraced Christianity, may be put to death." Several years ago the Sultan officially declared that this principle of Islam holy law should never be practiced; and there are now some few Christians here who were once Moslems, residing at the capital, and in frequent intercourse with the higher functionaries of the Government. I am probably better acquainted than yourself with its feelings. I would, therefore, not encourage you to do what, though very creditable to your feelings as a Protestant, I should not be able to sustain you in.

You may, however, easily verify what I have stated by putting forward a claim to protect the individuals mentioned in your dispatch.

As to the American missionaries, I, of course, need not add that every possible means should be adopted for their protection. Their dwellings and establishments are inviolate, and will never, I presume, be molested.

I am, &c.,

JOHN P. BROWN.

J. BALDWIN HAY, Esq.,
United States Vice-Consul-General, Beirut.

Mr. Hay to Mr. Brown.

UNITED STATES CONSULATE-GENERAL,
Beirut, October 11, 1871.

SIR: I have the honor to acknowledge your official note, dated the 19th ultimo, on the protection alleged to have been given by the United States consular agent at Tripoli to an employé of the Rev. Mr. H. S. Jessup. This is the first that I have heard of the affair, and I have requested Mr. Tanni to give me full particulars of the case, and to what extent he has protected the said employé; and I shall send you his report as soon as received.

In the meanwhile allow me to request special instructions respecting the claim of American missionaries in Syria to official protection in their vocation.

The American missionary enters the Ottoman Empire with the avowed object of teaching the Christian religion to the subjects of this Empire, not secretly, but openly. The Ottoman Government, by reason of according them permission to teach and preach the Christian religion, and to open schools, cannot justly offer them any molestation or hindrance in pursuing their object, nor can it consistently injure, threaten, or persecute such of its subjects as may embrace the religion which it allows the missionaries to teach. If a Mohammedan subject of Turkey embraces Christianity, by the laws of Mohammedanism his evidence is worthless, and he can be put to death; but a recent decree of the Sultan proclaims *religious toleration* throughout the Empire. This decree is not practically enforced in Syria, and American missionaries often desire and expect consular interposition to succor persecuted native teachers and native converts. Such a course is offensive to the local authorities, who are secretly (if not openly) upheld in Constantinople by their superiors.

Only the *firm pressure of Christian nations* caused the Sultan to proclaim religious liberty, and a constant pressure is absolutely necessary to secure this liberty of conscience to converts who desire to experience its benefit.

Having thus briefly stated the position of American missionaries in Syria, I earnestly desire instructions as to how far they are to be protected in their calling, and to what extent, if any, consuls can protect their teachers, their pupils, and the natives who have been converted by their ministry. (The word protection in this case means protection from persecution on account of religious belief.)

I am, &c.,

J. BALDWIN HAY,
Vice-Consul-General.

Hon. JOHN P. BROWN,
United States Minister, Constantinople.

As to protection to be afforded to missionaries in China, see Mr. Fish, Sec. of State, to Mr. Avery, July 30, 1875; MSS. Inst., China. As to Chinese toleration in this respect, see *infra*, §§ 67, 144.

"I transmit herewith for your information the inclosed copies of dispatches No. 67, of January 18 last, and No. 323, of the 5th ultimo, from our consul at Beirut, Syria, and consul-general at Constantinople, in relation to the difficulties encountered by American citizens and graduates of the American college at Beirut in their endeavor to practice their profession in the Ottoman Dominions.

"To some extent the onerous and unjust discriminations of the Turkish authorities in respect of this general subject are familiar to your legation, the case of the late Dr. Calhoun being a recent one in point.

"In that case, where it was sought to impose unreasonable restrictions in regard to Dr. Calhoun's medical practice, the Department en-

deavored to secure for him only such treatment in respect to his examination as was enjoyed by medical practitioners, citizens or subjects of other countries, residing and practicing in Turkey. So, too, in the present instance, where the cases are practically the same, we ask only fair and impartial treatment for our citizens who desire to follow their profession in that country.

"It is difficult to believe that the Turkish Government would knowingly permit its local authorities to so unjustly discriminate against American medical practitioners. This is the more singular and to be regretted when it is remembered that our citizens have been regularly graduated from the college at Beirut, a chartered and trustworthy institution, having authority to confer such diplomas, and in view of the undoubted statement that no such exactions as are sought to be imposed upon our citizens are attempted or enforced against medical practitioners of other nationalities, even when they have not followed any prescribed course of study. Yet this is precisely the situation as represented by Mr. Robeson, whose strenuous efforts have unfortunately been thus far unavailing to stop or prevent so unjust a discriminatory practice. Nor, I regret to add, so far as Mr. Heap's knowledge goes, have those which have been put forth by the legation or consulate-general for the relief of our citizens in such cases been hardly more satisfactory, notwithstanding the orders and promises of the Turkish Government. The faculty of the college at Beirut now hope for one of the following privileges:

"First. A charter as an independent medical college, with power to grant legal degrees in medicine and surgery.

"Second. The privilege of granting degrees in medicine and surgery, which, to be legalized, shall be forwarded to Constantinople through the American minister or consulate-general, to be signed and sealed by the Imperial College officials.

"Third. Failing in either of these, the appointment of an examining board of Government physicians in Beirut or Damascus, with power to grant a certificate to the graduates of the American college after they have passed a satisfactory examination before the said board, which certificate shall authorize the holder to practice medicine anywhere in the Ottoman Empire.

"These propositions appear reasonable and just, and any one of them, if adopted, would doubtless afford a practical and satisfactory solution of the present difficulties surrounding American medical practitioners in that country. In the opinion of this Government, therefore, the Government of Turkey should be willing to grant one or the other of these privileges, and enforce a compliance of its orders by the local authorities throughout the Empire.

"The inclosed correspondence will enable you to fully and carefully present this subject to the Government of the Porte. This you will accordingly do, and endeavor to obtain through the adoption of one of

the courses suggested above, or some other equally satisfactory method, recognition of the competent diplomas issued by the American college at Beirut to its medical graduates.

"This Government is disposed to admit that every country has the right to prescribe the mode of recognition of medical practitioners within its borders. While granting this, it is only reasonable to expect, therefore, that any regulations governing in such cases should be fair and impartial, and not discriminate in favor of any one nationality. All that is demanded in the interest of our citizens is that the rule adopted shall be uniform and without any practical discrimination against duly graduated American practitioners. Common justice and international intercourse alike suggest that no other course should be recognized or permitted."

Mr. Frelinghuysen, Sec. of State, to Mr. Wallace, March 27, 1884; MSS. Inst., Turkey; For. Rel., 1884.

"The question of the *personal* protection of parties whose sojourn in Mexico may be under such conditions or associations as to bring them into conflict with Mexican law and, probably, worse still, with native prejudices, is a grave matter which, from its complexity, requires the most discreet handling. In the two cases mentioned in your present dispatch, the element of discretion in the proceeding of the American citizens concerned is not, I regret to say, evident. In the one, it is proposed to erect a Protestant house of worship in immediate proximity to a Catholic church. In the other, the ruins of a consecrated edifice are proposed to be utilized for the worship of another faith. The legal right to do these things may be perfect in all respects, but the moral aggressiveness of the proceeding may tend to arouse local sensibilities and divert them into undesirable channels. It is one thing to be drawn unintentionally into a controversy; it is quite another to provoke it.

"I find in the records of this Department a recent instance bearing on this question and showing the views of my immediate predecessor touching the extent to which international right may be invoked to defend acts which may be lawful in themselves, but which may tend to disturb the popular feeling.

"In 1884 an instruction (No. 147, of January 9) was addressed to Mr. Wallace, United States minister at Constantinople, in reply to a dispatch reporting the correspondence had with the Turkish Government concerning the alleged conversion by the missionaries, in certain parts of Armenia, of their dwellings to ecclesiastical purposes, and their use of bells as a part of their worship.

"Mr. Frelinghuysen remarked that the right of private worship in a dwelling-house must be maintained, and that if it were infringed the remonstrances of the legation were to be immediate and energetic. To insure that the intervention of this Government in such a case was obtained in good faith and due as a right, it was very desirable

that such discretion should be observed by American citizens of non-Mohammedan faith, who had taken up their abode in the Mohammedan regions of Turkey, as not to overstep the bounds which separate private from public worship, or to give grounds for any plausible complaint by the Turkish authorities that the sensibilities of their people were wounded by any, to them, offensive demonstrations of a character usually connected with public ecclesiastical worship.

"I now quote Mr. Frelinghuysen's language literally. He says:

"'The point may be best illustrated by the question of the bells said to have been hung by the missionaries in certain localities. It is presumed, from the nature of the case, that these bells have been hung in or upon private dwellings; that their purpose is to summon worshipers to the private services held within those dwellings, and that (in connection with the internal arrangement of those dwellings, which, it is supposed, are such as to facilitate the assemblage of persons outside of the household) this use of bells is held by the Turks to indicate the use of a private dwelling for the usual purposes of a church.

"'If the question was frankly presented by the Turkish Government as to whether a bell, so hung and so rung, openly, audibly, over an extended neighborhood, is a needful or useful adjunct to a private dwelling, the answer would be as frankly made that it was not so regarded by this Government. It is not unlikely that an equivalent, a similarly conspicuous Mohammedan demonstration upon a private dwelling in any populous locality here or in any Christian country, would be suppressed as a nuisance, and this without any idea of interfering with liberty of worship or individual conscience.'

"Mr. Frelinghuysen also intimated to Mr. Wallace that it might be well to inform the missionaries who sought his advice or intervention in such matters, that the United States Government was not willing to make the right to use church bells on private dwellings a diplomatic question with Turkey, and that the part of discretion for them to pursue would appear to be the avoidance of opportunities of giving offense to the people among whom their lot was cast.

"It is, however, quite clear in the cases now before me, that if antagonisms be created by acts in perfect accord with principles of domestic and international law, as well as the letter of individual rights, the parties are entitled to personal protection against any unlawful interference with those rights, by all means ordinarily within the power of the local authorities in the first instance, and secondly, in case of denial thereof, by the interposition of the Government of the country of the complaining individual.

"The administrative and political system of civilized Governments is designed to afford security to the individual in the enjoyment of his lawful personal rights, and is supposed to be adequate for all usual demands upon their power. The application of extraordinary means for individual protection, especially if the assertion of the individual's

rights be demonstratively aggressive, and calculated from the nature of things in the locality to lead to conflict, is hardly to be expected.

"You will, of course, understand that much of this instruction is designed for your personal guidance. The tone of your dispatch, however, leads the Department to place the utmost reliance in your wisdom and discretion in dealing with this class of questions."

Mr. Bayard, Sec. of State, to Mr. Jackson, July 17, 1885; MSS. Inst., Mexico.

The work of the American missionaries at the Caroline Islands, irrespective of its sectarian relations, with which the Department can manifest no concern, is one of unostentatious and unselfish beneficence which may be properly brought to the notice of the German and Spanish Governments at the time of the controversy between them as to the possession of these islands.

Mr. Bayard, Sec. of State, to Mr. Strobel, Sept. 7, 1885; MSS. Inst., Spain.
For further instructions as to intervention in behalf of missionaries, see Mr. Bayard, Sec. of State, to Mr. Cox, Aug. 17, 1885; MSS. Inst., Turkey; For. Rel., 1885, cited *infra*, § 230; and see App., Vol. III, § 68*a*.

(11) GOOD OFFICES FOR PERSECUTED JEWS.

§ 55.

In 1840, at the time of the maltreatment of Jews at Damascus, our "chargé d'affaires at Constantinople was instructed to interpose his good offices on behalf of the oppressed and persecuted race of the Jews in the Ottoman dominions, among whose kindred are found some of the most worthy and patriotic of our own citizens."

Mr. Forsyth, Sec. of State, to Mr. Kurschedt, Aug. 26, 1840; MSS. Dom. Let.

The joining by a consul of the United States, in a Mohammedan country, with consuls from other powers in a protest against the conviction and execution of a Jew for blasphemy, meets with the approval of the Government of the United States.

Mr. Cass, Sec. of State, to Mr. Chandler, July 29, 1857; MSS. Inst., Barbary Powers.

"It has been suggested to this Department, and the suggestion is concurred in, that if the sympathy which we entertain for the inhumanly persecuted Hebrews, in the principalities of Moldavia and Wallachia, were made known to the Government to which you are accredited, it might quicken and encourage the efforts of that Government to discharge its duty as a protecting power pursuant to the obligations of the treaty between certain European states. Although we are not a party to that instrument, and, as a rule, scrupulously abstain from interfering, directly or indirectly, in the public affairs of that quarter, the grievance adverted to is so enormous as to impart to it, as it were, a cosmopolitan character, in the redress of which all countries, Governments, and creeds are like interested.

"You will consequently communicate on this subject with the minister for foreign affairs of Russia, in such a way as you may suppose might be most likely to compass the object in view."

Mr. Fish, Sec. of State, to Mr. Curtin, July 22, 1872; MSS. Inst., Russia; For. Rel., 1872.

"I have to acknowledge the receipt of your letter of the 4th instant, in which you request that protection be granted by our representatives in the Ottoman dominions to Israelites of Russian birth in and near Jerusalem.

"As a rule our representatives abroad are permitted to extend the protection of the United States only to native-born or naturalized citizens thereof, but the sympathy of the United States for all oppressed peoples in foreign countries has been freely manifested in all cases where it could be done in accordance with the spirit of international courtesy and diplomatic usage. In granting such protection it is requisite, of course, that the representatives of the country to which the persons requiring protection owe allegiance should request it, and the authorities of the country in which they are at the time residing consent to it. The desired protection will be extended, if these conditions are complied with."

Mr. F. W. Seward, Acting Sec. of State, to Mr. Isaacs, June 29, 1877; MSS. Dom. Let.

"At the invitation of the Spanish Government, a conference has recently been held at the city of Madrid to consider the subject of protection by foreign powers of native Moors in the Empire of Morocco. The minister of the United States in Spain was directed to take part in the deliberations of this conference, the result of which is a convention signed on behalf of all the powers represented. The instrument will be laid before the Senate for its consideration. The Government of the United States has also lost no opportunity to urge upon that of the Emperor of Morocco the necessity, in accordance with the humane and enlightened spirit of the age, of putting an end to the persecutions which have been so prevalent in that country of persons of a faith other than the Moslem, and especially of the Hebrew residents of Morocco."

President Hayes's Fourth Annual Message, 1880.

"No official interposition in behalf of Israelites who are Moorish subjects can be sanctioned, as this would be improper in itself, and would be a precedent against us which could not be gainsaid. Still, there might be cases in which humanity would dictate a disregard of technicalities, if your personal influence would shield Hebrews from oppression."

Mr. Evarts, Sec. of State, to Mr. Mathews, March 20, 1878; MSS. Inst., Barb Powers. (See same to same, July 2, 1878; *id.*)

"It is, as you are of course aware, difficult for a foreign Government to make the full force of its influence felt in intervening for the protection of native subjects of the state addressed. Nevertheless, in view of the fact that the informal and friendly offices of the United States have, at times before now, been used with good effect, through the informal action of their representatives abroad in the interests of humanity and of that full religious toleration and equity which form so conspicuous a base for our own enlightened institutions, I shall be happy to instruct the United States consul at Tangier that he is at liberty to act, in the sense of your request, so far as may be consistent with his international obligations, and the efficiency of his official relations with the Scheriffian Government."

Mr. Evarts, Sec. of State, to Messrs. Isaacs and Wolf, July 1, 1878; MSS. Dom. Let.

Although the mitigation of the persecution of the Hebrew race in Roumania could not be made a *sine qua non* to the establishment of official relations with that country, yet it may be made the subject of kindly representations prior to the establishment of such relations.

Mr. Evarts, Sec. of State, to Mr. Kasson, August 9, 1879; MSS. Inst., Austria.

"I have received a letter from Messrs. S. Wolf and A. S. Solomons, of this city, representing the 'Union of American-Hebrew Congregations,' in which they refer to newspaper statements indicating that the Jews in Russia have recently been subjected by the Government there to extraordinary hardships, and expressing a desire that the minister of the United States to Saint Petersburg may be instructed 'to make such representations to the Czar's Government, in the interest of religious freedom and suffering humanity, as will best accord with the most emphasized liberal sentiments of the American people.' The writers of the letter observe at the same time that they are well 'aware of the impropriety of one nation interfering with the internal affairs of another in matters of a purely local character.'

"You are sufficiently well informed of the liberal sentiments of this Government to perceive that whenever any pertinent occasion may arise its attitude must always be in complete harmony with the principle of extending all rights and privileges without distinction on account of creed, and cannot fail, therefore, to conduct any affair of business or negotiation with the Government to which you are accredited which may involve any expression of the views of this Government on the subject in a manner which will subserve the interests of religious freedom. It would, of course, be inadmissible for the Government of the United States to approach the Government of Russia in criticism of its laws and regulations, except so far as such laws and regulations may injuriously affect citizens of this country in violation of natural rights, treaty obligations, or the provisions of international law, but it is desired that

the attitude of the minister as regards questions of diplomatic controversy which involve an expression of view on this subject may be wholly consistent with the theory on which this Government was founded."

Mr. Evarts, Sec. of State, to Mr. Foster, April 14, 1880; MSS. Inst., Russia; For. Rel., 1880. Adopted by Mr. Blaine, Sec. of State, to Mr. Bartholomei, June 20, 1881; MSS. Notes, Russia.

Although official interference on behalf of Hebrews in Tangier, not citizens of the United States, is not permissible, yet the consul of the United States at that place may not improperly take such steps of inquiry as to the condition of Hebrews in Morocco as may tend to the amelioration of their condition and may not be inconsistent with international obligations.

Mr. Evarts, Sec. of State, to Mr. Mathews, April 22, 1880, March 2, 1881; MSS. Inst., Barb. Powers. (See *infra*, § 164.)

"I have to acknowledge the receipt of Mr. Hoffman's No. 205 and 208, in relation to the expulsion of foreign Jews from certain large towns and cities of Russia, and the expulsion of Mr. Henry Pinkos, a Jew and an American citizen, from St. Petersburg in particular. It appears from the latter dispatch that Pinkos has been allowed to remain three months. Mr. Hoffman does not specifically state that Mr. Pinkos or the other Jews referred to have been ordered to leave Russia as well as St. Petersburg, but that is the implication of the dispatches.

"In reply I have to observe that in the presence of this fact, that an American citizen has been ordered to leave Russia on no other ground than that he is the professor of a particular creed, or the holder of certain religious views, it becomes the duty of the Government of the United States, which impartially seeks to protect all its citizens of whatever origin or faith, solemnly, but with all respect to the Government of His Majesty, to protest. As this order of expulsion applies to all foreign Jews, in certain towns or localities, at least, of Russia, it is of course apparent that the same is not directed especially against the Government of which Mr. Pinkos is a citizen, and, indeed, the long-standing amity which has united the interests of Russia with those of this Government would of itself forbid a remote supposition that such might be the case. Notwithstanding this aspect of the matter, the United States could not fail to look upon the expulsion of one of its citizens from Russia, on the simple ground of his religious ideas or convictions, except as a grievance, akin to that which Russia would doubtless find in the expulsion of one of her own citizens from the United States on the ground of his attachment to the faith of his fathers.

"It is intimated in Mr. Hoffman's No. 205 that the reason of this order may be found in the supposed implication of Jews in the plots formed against the life of the Emperor, and in so far as this may be true the Government of Russia has the entire sympathy of the Government of

the United States in all just preventive efforts; and if there exists good evidence that Mr. Pinkos has been connected with any of these attempts the Government of the United States cannot object to his expulsion on that ground. But such a charge does not appear to have been brought against Mr. Pinkos; and it is confidently submitted to His Majesty's Government whether in the event Mr. Pinkos should finally be expelled from Russia, or be otherwise interrupted in his peaceful occupations, on the sole ground that his religious views are of one kind rather than another, he would not be justly entitled to make reclamation for the damage and loss to which he might thereby be subjected."

Mr. Evarts, Sec. of State, to Mr. Foster, June 28, 1880; MSS. Inst., Russia; For. Rel., 1880. As to expulsion of aliens, see *infra*, § 206.

"Your several dispatches, numbered 73, 74, and 75 of the 30th and 31st of December, ultimo, in relation to the treatment of American Jews in Russia, have been received, and I have pleasure in commending your zealous presentation of the cases of Pinkos and Wilczynski, and of the general questions involved. The assurances you have received as to the liberal treatment hereafter to be accorded, as an act of comity and courtesy by the military authorities, to American citizens visiting Russia, are fully appreciated.

"I have observed, however, that in some of your conversations and writings with the foreign office, you give prominence to the natural American sympathy with oppressed Jews elsewhere as a motive for our solicitude as to the treatment of Jews in Russia. Such solicitude might very properly exist; but in your presentation of the facts you should be careful to impress that we ask treaty treatment for our aggrieved citizens, not because they are Jews, but because they are Americans. Russia's treatment of her own Jews, or of other foreign Jews resorting thither, may, in determinate cases, attract the sympathy of the American people, but the aim of the Government of the United States is the specific one of protecting its own citizens. If the hardships to which Russian and foreign Jews are subjected involves our citizens, we think we have just grounds for remonstrance and expectancy of better treatment.

"This Government does not know or inquire the religion of the American citizens it protects. It cannot take cognizance of the methods by which the Russian authorities may arrive at the conclusion or conjecture that any given American citizen professes the Israelitish faith. The discussion of the recent cases has not as yet developed any judicial procedure whereby an American citizen, otherwise unoffending against the laws, is to be convicted of Judaism, if that be an offense under Russian law; and we are indisposed to regard it as a maintainable point that a religious belief is, or can be, a military offense, to be dealt with under the arbitrary methods incident to the existence of a 'state of siege.'

"This Government is not unmindful of the difficulties under which, as is alleged, that of Russia labors in dealing with those of her subjects whom she may deem disaffected; but the reasons adduced and methods adopted against them should have no application to American citizens sojourning peacefully, for business or pleasure, in Russia, for they are not to be charged with abstract political disaffection to a Government to which they owe no allegiance; and, if charged with the commission of unlawful acts, they should have guilt explicitly imputed and proven. In the latter case, the religion of the accused cannot be admitted as proof or presumption, either of guilt or of innocence.

"It is not the desire of this Government to embarrass that of Russia by insistence upon these points with any degree of harshness, when the disposition reported in your dispatches is so conciliatory, and when the treatment offered may operate effectively to remove or prevent future causes of complaint based on the ill treatment of American citizens alleged to be Jews. It is most desirable, however, that you should not pretermit your efforts to bring the matter to such a stage as will insure for peaceable and law-abiding Americans in Russia like treaty rights and personal freedom of creed as Russians enjoy in the United States."

Mr. Evarts, Sec. of State, to Mr. Foster, March 3, 1881; MSS. Inst., Russia; For. Rel., 1881. See *infra*, § 159.

"From a careful examination of the cases of grievance heretofore reported by your legation, it appears that the action of the Russian authorities toward Americans citizens, alleged to be Israelites, and visiting Russia, has been of two kinds:

"First. Absolute prohibition of residence in Saint Petersburg and in other cities of the Empire, on the ground that the Russian law permits no native Jews to reside there, and that the treaty between Russia and the United States gives to our citizens in Russian jurisdiction no other rights or privileges than those accorded to native Russians. The case of Henry Pinkos may be taken as a type of this class.

"Second. Permission of residence and commerce, conditionally on belonging to the first guild of Russian merchants and taking out a license. The case of Rosenstrauss is in point.

"The apparent contradiction between these two classes of actions becomes more and more evident as the question is traced backward. The Department has rarely had presented to it any subject of inquiry in which a connected understanding of the facts has proved more difficult. For every allegation, on the one hand, that native laws, in force at the time the treaty of 1832 was signed prohibited or limited the sojourn of foreign Jews in the cities of Russia, I find, on the other hand, specific invitation to alien Hebrews of good repute to domicile themselves in Russia, to pursue their business calling under appropriate license, to establish factories there, and to purchase or lease real estate. Moreover, going back beyond 1832, the date of our treaty, I observe

that the imperial ukases concerning the admission of foreigners into Russia are silent on all questions of faith; proper passports, duly viséd being the essential requisite. And, further back still, in the time of the Empress Catherine, I discover explicit tolerance of all foreign religions laid down as a fundamental policy of the Empire.

"Before examining the issues directly before us, it may not be out of place to give a brief review of these historical data.

"The ukase of the Empress Catherine, of 22d February, 1784, although concerning only the establishment of commercial relations with the new possessions of Russia on the Black Sea, contains the following notable declaration:

"'That Sebastopol, Kharson, and Theodocia be opened to all the nations friendly to our Empire for the advantage of their commerce with our faithful subjects, * * * that the said nations may come to these cities in all safety and freedom. * * * Each individual of such nation, whoever he may be, as long as he shall remain in the said cities by reason of his business, or of his own pleasure, shall enjoy the free exercise of his religion according to the praiseworthy precepts handed down to us by the sovereigns our predecessors, and which we have again received and confirmed, "that all the various nationalities established in Russia shall praise God, the All Powerful, each one after the worship and religion of his own ancestors," * * * and we promise, upon our imperial word, to accord to all foreigners in these three cities the same advantages which they already enjoy in our capital and seaport, St. Petersburg, &c.'

"The full text of this ukase, which breathes a spirit of large and enlightened tolerance in advance of the policy of those days, is well worthy of perusal, and may be consulted in vol. 4 of Martens' "Recueil des Traités," 1st edition, Göttingen, 1795, pages 455–457.

"The imperial ordinance of the Czar Alexander I, of 13th August, 1807, decrees a rigid system of passports for foreigners entering Russia, and is applicable to 'all foreigners, of whatsoever nationality,' but intimates no restriction on travel or sojourn in Russia by reason of race or faith. This ordinance was modified and amplified by the ukase of 25th February, 1817, but still without any manner of religious proscription or restriction.

"From this time down to 1860 I can find no trace of the enforcement, especially against American citizens, of the restrictions against Jewish travel and residence which are stated to have existed when our treaty with Russia was signed. It is a significant circumstance that the acknowledged authorities on private international law, writing during this period upon the legislation of all Europe as affecting the persons and rights of aliens, make no reference to such disabilities. Even the painstaking Fœlix is silent on this point, although devoting much space to the treatment and rights of aliens in Russia. I do not desire to be here understood as arguing that the asserted disabilities did not exist

at that time. The domestic history of the Russian Empire shows plainly the restrictions placed upon native Hebrews, and especially those of Polish origin, the efforts to confine them to certain parts of the Empire, and the penalties sought to be imposed to deter them from mingling with the Christian subjects of the Czar. But the same history shows the gradual relaxation of those measures, until, in the capital itself, the native Israelite population is said to number some thirty thousand souls, with their synagogues and sectarian schools; while a special ukase of the late Czar distinctly recognizes to foreign Hebrews every privilege of residence and trade, in a certain guild, which native Christian subjects possess.

"This ukase of the Emperor Alexander II, of 7th of June, 1860, after premising that the need of commercial development and the principles of internation al reciprocity make it proper to concede 'to foreigners dwelling in Russia the same rights as those which our subjects enjoy already in the principal countries of Europe,' proceeds to permit all aliens to enter any of the trading guilds on the same footing as natives and to thereupon enjoy all the commercial privileges which these guilds confer upon native Russian traders, with the following qualification:

"'FIRST REMARK.—Foreign Hebrew subjects, known by reason of their social position and the wide extent of their commercial operations, who come from foreign lands, may, after the established formalities, that is to say, upon a special authorization, issued in each case by the ministers of finances, of the interior, and of foreign affairs, trade in the Empire and establish banking-houses herein, upon procuring the license of a merchant of the first guild. It is likewise permitted to these same Israelites to establish factories, to acquire and to lease real estate conformably to the prescriptions of the present ukase.'

"This provision, it will be observed, extends to the whole territory of the Empire. If, as I understand the response of the Russian ministry in the case of Henry Pinkos, native Israelites are forbidden by law from residing or trading in the capital, then this ukase places all foreign Jews (whether belonging to treaty powers or not) on a more favored footing. But if native Hebrews, as a fact, are permitted to reside in St. Petersburg and engage in trade in other guilds than the so-called 'first guild,' there may then well be question whether such restriction to a particular guild in the case of an American Israelite is consonant with the express provisions of the treaty of 1832, Article I. This point was, in fact, raised in the case of Theodore Rosenstrauss, at Kharkoff, which is narrated at length, with all the correspondence therein exchanged, in Mr. Sewell's dispatch No. 20, of December 15, 1873; but it does not seem to have been then exhaustively considered whether the complainant received, under the treaty, the like treatment with the native Hebrews of Kharkoff, or whether he was constrained to obey the ukase of 1860, which, as I have above remarked, is framed for general application to all aliens and irrespective of treaty rights. It is, however,

not my present purpose to reargue this old case, but simply to call attention to the fact that Russian law may, and possibly does, modify and restrict treaty rights. The Rosenstrauss case was special in its nature, and concerned commercial privileges under a promulgated license law of the Empire. It may be necessary, at some future time, to discuss the questions it involves, but just now I am concerned with a different class of cases, namely, those of American citizens visiting Russia for private business or for pleasure and travel, and duly provided with the passports of this Government, authenticating their national character and their consequent right to all the specific guarantees of our treaty.

"This brings me again to the cases of Pinkos and Wilczynski. It is unnecessary here to recapitulate the facts therein, as they are amply presented by the files of your legation, and by the correspondence had with the Russian foreign office. It is sufficient to characterize them as instances of the notified expulsion from St. Petersburg, by the police or military authorities, of American citizens, not because of any alleged failure to comply with the ukase of 1860, or with the Russian commercial code, but simply on the allegation, unsupported by proof, that they professed the Israelitish faith, and that the law forbade the sojourn of native Israelites in the imperial capital. On this brief formulation of the case, this Government believes that, under its treaty with Russia, and in view of its treatment of Russian subjects resorting under like circumstances to the United States, it has just ground for complaint, and expectancy of better treatment from the Government of Russia.

"The provision of our treaty of 1832 with Russia, governing the commercial privileges of the citizens and subjects of the two countries, is as follows:

"'ARTICLE I. There shall be between the territories of the high contracting parties a *reciprocal liberty* of commerce and navigation.

"'The inhabitants of their respective states shall *mutually* have liberty to enter the ports, places, and rivers of each party *wherever foreign commerce is permitted.* They shall be at liberty to sojourn and reside *in all parts whatsoever* of said territories, in order to attend to their affairs; and they shall enjoy, to that effect, the same security and protection as natives of the country wherein they reside, on condition of their submitting to the laws and ordinances there prevailing, and particularly to the regulations in force concerning commerce.'

"Article X confers specific personal rights reciprocally. In respect of this article an infringement alike of the letter and the spirit of the treaty is not only possible, but probable, under the rigid interpretation of the Jewish laws upon which Russia seems disposed to insist. Its stipulations concern the right to dispose of personal property in Russia owned by or falling to American citizens, who may receive and dispose of inheritances and have recourse to the courts in settlement of questions arising thereunder. It certainly could not be seriously claimed or justly admitted that an American Hebrew, coming within the pro-

visions of this article, is to be treated as a candidate for commercial privileges, and required to take out a license as a trader of the first guild, subject to the approval of his application by the ministries of finance, interior, and foreign affairs. A personal right, not a mercantile privilege, is conferred. To bar an American citizen whose rights might be so concerned from personal appearance in protection of those rights would be a distinct departure from the engagement of the treaty; while to suppose that his case might come under the discretional authority of the police or the military power, which might refuse his personal sojourn in any part of the Empire, or allow it under conditions depending on their good will, is to suppose a submission of the guarantees of the treaty to a tribunal never contemplated by its framers.

"Upon a case arising, this Government would hold that the treaty conferred specific rights on all American citizens in the matter of the disposition of their personal property, irrespective of any conditions save those which the article itself expressly creates; that their actual presence when necessary to protect or assert their interests is absolutely guaranteed whenever and for whatever time it may be needful; and that this international engagement supersedes any municipal rule or regulation which might interfere with the free action of such individuals.

"It would be, in the judgment of this Government, absolutely inadmissible that a domestic law restraining native Hebrews from residence in certain parts of the Empire might operate to hinder an American citizen, whether alleged or known to profess the Hebrew faith, from disposing of his property, or taking possession thereof for himself (subject only to the laws of alien inheritance) or being heard in person by the courts which, under Russian law, may be called upon to decide matters to which he is necessarily a party. The case would clearly be one in which the obligation of a treaty is supreme, and where the local law must yield. These questions of the conflict of local law and international treaty stipulations are among the most common which have engaged the attention of publicists, and it is their concurrent judgment that where a treaty creates a privilege for aliens in express terms, it cannot be limited by the operation of domestic law without a serious breach of the good faith which governs the intercourse of nations. So long as such a conventional engagement in favor of the citizens of another state exists, the law governing natives in like cases is manifestly inapplicable.

"I need hardly enlarge on the point that the Government of the United States concludes its treaties with foreign states for the equal protection of all classes of American citizens. It can make absolutely no discrimination between them, whatever be their origin or creed. So that they abide by the laws, at home or abroad, it must give them due protection and expect like protection for them. Any unfriendly or discriminatory act against them on the part of a foreign power with which we

are at peace would call for our earnest remonstrance, whether a treaty existed or not. The friendliness of our relations with foreign nations is emphasized by the treaties we have concluded with them. We have been moved to enter into such international compacts by considerations of mutual benefit and reciprocity, by the same considerations, in short, which have animated the Russian Government from the time of the noble and tolerant declarations of the Empress Catherine in 1784 to those of the ukase of 1860. We have looked to the spirit rather than to the letter of those engagements, and believed that they should be interpreted in the broadest way; and it is, therefore, a source of unfeigned regret to us when a Government, to which we are allied by so many historical ties as to that of Russia, shows a disposition in its dealings with us to take advantage of technicalities, to appeal to the rigid letter and not the reciprocal motive of its international engagements in justification of the expulsion from its territories of peaceable American citizens resorting thither under the good faith of treaties and accused of no wrong-doing or of no violation of the commercial code of the land, but of simple adherence to the faith of their fathers.

"That the two American citizens whose unfortunate cases have brought about this discussion were not definitely expelled from St. Petersburg, but were allotted, by the military authorities, a brief time to arrange their private affairs, said to coincide with the usual time during which any foreigner may remain in the Empire under his original passport, does not alter the matter as it appears to our eyes. The motive alleged remains the same, and the principle involved is one recognized neither by our fundamental laws nor by any of the conventions we have concluded with foreign states.

"It must not be forgotten that this issue, of the banishment of our citizens from a friendly territory by reason of their alleged religion, is a new one in our international relations. From the time when the treaty of 1832 was signed down to within a very recent period, there had been nothing in our relations with Russia to lead to the supposition that our flag did not carry with it equal protection to every American within the dominions of the Empire. Even in questions of citizenship affecting the interests of naturalized citizens of Russian origin, the good disposition of the Imperial Government has been on several occasions shown in a most exemplary manner; and I am sure the actual counselors of His Majesty cannot but contemplate with satisfaction the near approach made in 1874 to the arrangement of negotiations for a treaty of naturalization between the two countries. On that occasion, as will be seen by consulting Mr. Jewell's No. 62, of April 22, 1874, the only remaining obstacle lay in the statute of the Empire touching the conferment and loss of citizenship, of which the examining commission and the consultative council of state recommended the modification in a sense compatible with the modern usage of nations.

"I can readily conceive that statutes bristling with difficulties remain unrepealed in the volumes of the law of Russia as well as of other nations. Even we ourselves have our obsolete "Blue Laws"; and their literal enforcement, if such a thing were possible, might to-day subject a Russian of free-thinking proclivities, in Maryland or Delaware, to the penalty of having his tongue bored through with a red-hot iron for blasphemy. Happily the spirit of progress is of higher authority than the letter of outworn laws; and statutory enactments are not so inelastic but that they relax and change with the general advancement of peoples in the path of tolerance.

"The simple fact that thousands of Israelites to-day pursue their callings unmolested in St. Petersburg, under the shadow of ancient proscriptive laws, is in itself an eloquent testimony to the principle of progress. And so, too, in Spain, where the persecution and expulsion of the Jews is one of the most notable and deplorable facts in history, and where the edicts of the earlier sovereigns remain unrepealed, we see to-day an offer of protection and assured right of domicile made to the Israelites of every race.

"I leave out of consideration in the present instruction the question whether the citizens or subjects of other nations are more or less favored than our own in this regard. I have not, however, failed to notice the statement made to you by Mr. de Giers, in one of your reported conversations with him, that German and Austrian Jews are subjected to the proscriptions in question, and the implication therefrom that if the Governments of Germany and Austria do not complain, there is no reason why we should.

"It is not for me to examine or conjecture the reciprocal motives of policy or of international convention which may govern in these instances. Neither have I failed to remark the seeming uncertainty with which the British Government has approached the case of the English Israelite, Mr. Lewisohn, who was recently required to quit St. Petersburg, notwithstanding that the personal guarantees of the Anglo-Russian treaty of January 12, 1859, in its eleventh, twelfth, and thirteenth articles, are more particular than in our own treaty, and were, presumably, like our own stipulations, framed with the intent of securing impartial rights and protection in Russia. I am perfectly willing to rest my argument on the moral weight of our treaty of 1832, although of course not averse to availing myself of any support which may come from any other quarter to fortify what we conceive to have been our clear purpose in executing that instrument. And under no circumstances would I in the name of this Government be willing to accept a less measure of impartial privilege for a citizen of the United States visiting or sojourning in Russian territory than is assured to aliens in the like case by any stipulation with or usage toward any other nation on the part of Russia.

"I had the honor in my letter of the 20th ultimo to Mr. Bartholomei

to acquaint him with the general views of the President in relation to this matter.

"I cannot better bring this instruction to a close than by repeating and amplifying those views which the President so firmly holds, and which he so anxiously desires to have recognized and responded to by the Russian Government.

"He conceives that the intention of the United States in negotiating and concluding the treaty of December 18, 1832, and the distinct and enlightened reciprocal engagements then entered into with the Government of Russia, give us a moral ground to expect careful attention to our opinions as to its rational interpretation in the broadest and most impartial sense; that he would deeply regret, in view of the gratifying friendliness of the relations of the two countries which he is so desirous to maintain, to find that this large national sentiment fails to control the present issue, or that a narrow and rigid limitation of the construction possible to the treaty stipulations between the two countries is likely to be adhered to; that if, after a frank comparison of the views of the two Governments, in the most amicable spirit and with the most earnest desire to reach a mutually agreeable conclusion the treaty stipulations between the United States and Russia are found insufficient to determine questions of nationality and tolerance of individual faith, or to secure to American citizens in Russia the treatment which Russians receive in the United States, it is simply due to the good relations of the two countries that these stipulations should be made sufficient in these regards; and that we can look for no clearer evidence of the good will which Russia professes toward us than a frank declaration of her readiness to come to a distinct agreement with us on these points, in an earnest and generous spirit.

"I have observed that in your conferences on this subject heretofore with the minister for foreign affairs, as reported in your dispatches, you have on some occasions given discreet expression to the feelings of sympathy and gratification with which this Government and people regard any steps taken in foreign countries in the direction of a liberal tolerance analogous to that which forms the fundamental principle of our national existence. Such expressions were natural on your part, and reflected a sentiment which we all feel. But in making the President's views known to the minister I desire that you will carefully subordinate such sentiments to the simple consideration of what is conscientiously believed to be due to our citizens in foreign lands. You will distinctly impress upon him that, regardful of the sovereignty of Russia, we do not submit any suggestions touching the laws and customs of the Empire except where those laws and customs conflict with and destroy the rights of American citizens as secured by treaty obligations.

"You can further advise him that we can make no new treaty with Russia, nor accept any construction of our existing treaty, which shall discriminate against any class of American citizens on account of their religious faith.

"I cannot but feel assured that this earnest presentation of the views of this Government will accord with the sense of justice and equity of that of Russia, and that the questions at issue will soon find their natural solution in harmony with the noble spirit of tolerance which pervaded the ukase of the Empress Catherine a century ago, and with the statesmanlike declaration of the principle of reciprocity found in the later decree of the Czar Alexander II in 1860.

"You may read this dispatch to the minister for foreign affairs, and should he desire a copy, you will give it to him."

Mr. Blaine, Sec. of State, to Mr. Foster, July 29, 1881; MSS. Inst., Russia; For. Rel., 1881.

As to intervention in behalf of "Mortara Boy," see *supra*, § 52.

"I am well aware that the domestic enactments of a state toward its own subjects are not generally regarded as a fit matter for the intervention of another independent power; but when such enactments directly affect the liberty and property of foreigners who resort to a country under the supposed guarantee of treaties framed for the most liberal ends—when the conscience of an alien owing no allegiance whatever to the local sovereignty is brought under the harsh yoke of bigotry or prejudice which bows the necks of the natives, and when enlightened appeals made to humanity, to the principles of just reciprocity, and to the advancing spirit of the age in behalf of tolerance are met with intimations of a purpose to still further burden the unhappy sufferers, and so to necessarily increase the disability of foreigners of like creed resorting to Russia, it becomes in a high sense a moral duty to our own citizens and to the doctrine of religious freedom we so strongly uphold to seek proper protection for those citizens and tolerance for their creed in foreign lands, even at the risk of criticism of the municipal laws of other states.

"It cannot but be inexpressibly painful to the enlightened statesmen of Great Britain, as well as of America, to see a discarded prejudice of the dark ages gravely revived at this day—to witness an attempt to base the policy of a great and sovereign state on the mistaken theory that thrift is a crime, of which the unthrifty are the innocent victims, and that discontent and disaffection are to be diminished by increasing the causes from which they arise."

Mr. Blaine, Sec. of State, to Mr. Lowell, Nov. 22, 1881; MSS. Inst., Great Britain.

"The prejudice of race and creed having in our day given way to the claims of our common humanity, the people of the United States have heard, with great regret, the stories of the sufferings of the Jews in Russia. It may be that the accounts in the newspapers are exaggerated, and the same may be true of some private reports. Making, however, due allowance for misrepresentations, it can scarcely be doubted that much has been done which a humane and just person must condemn.

"The President, of course, feels that the Government of the Emperor should not be held morally responsible for acts which it considers wrong, but which it may be powerless to prevent.

"If that be true of this case, it would be worse than useless for me to direct you, as the representative of the United States, to give official expression to the feeling which this treatment of the Jews calls forth in this country. Should, however, the attitude of the Russian Government be different, and should you be of the opinion that a more vigorous effort might be put forth for the prevention of this great wrong, you will, if a favorable opportunity offers, state, with all proper deference, that the feeling of friendship which the United States entertains for Russia prompts this Government to express the hope that the Imperial Government will find means to cause the persecution of these unfortunate fellow-beings to cease.

"This instruction devolves a delicate duty upon you, and a wide discretion is given you in its execution. However much this Republic may disapprove of affairs in other nationalities, it does not conceive that it is its right or province officiously and offensively to intermeddle. If, however, it should come to your knowledge that any citizens of the United States are made victims of the persecution, you will feel it your duty to omit no effort to protect them, and to report such cases to this Department."

Mr. Frelinghuysen, Sec. of State, to Mr. Hoffman, Ap. 15, 1882; MSS. Inst., Russia; For. Rel., 1882.

"I have received a dispatch, No. 429, of the 7th instant, from Mr. Heap, consul-general at Constantinople, in reference to the expulsion from Safed, Palestine, of two American citizens, Louis Lubrowsky and brother, Hebrews by nativity, because of their religious faith. It appears that these brothers on their recent arrival at Safed were required to give bonds in the sum of 400 Turkish pounds to leave the country in ten days or obtain a special license to remain.

"The facts in detail will be found narrated in the correspondence which, it seems, Mr. Heap brought to the attention of Mr. Emmet on the 22d ultimo and 3d instant. For this reason I do not inclose to you a copy of Mr. Heap's dispatch, but you will immediately call upon him for such further particulars as you may desire, should the facts not be fully before your legation.

"This case is commended to your attention as one in which the Department entertains the confidence that you will take the greatest interest and with which you will be competent to deal as a due regard for the rights of American citizens requires.

"It is to be borne in mind, however, that those rights, under treaties, are to be measured in a certain degree by the rights conceded to other foreigners of the most favored nation. You will be careful, therefore, to make no untenable demand *as of right*. But friendship and inter-

national comity entitle the United States to ask and expect that no or class distinction shall be made as regards American citizens abr and this Government cannot acquiesce in any such prescriptive meas which compel its citizens to abandon Turkey solely on account of religious proclivities.

"Mr. Heap's dispatch will acquaint you with the extent of his a and that of the consul at Beirut to prevent this wrong."

Mr. Bayard, Sec. of State, to Mr. Cox, Aug. 29, 1885; MSS. Inst., Turkey; Rel., 1885.

"Your No. 22 of the 24th instant has been received, and the a of Mr. Heap, therein reported, in opposing the order of the Tur authorities for the expulsion of the brothers Lubrowsky, American zens, from Safed, in Palestine, solely because of their Semitic f meets with the approval of the Department as anticipating the ins tions sent to you on the 29th of August last.

"This Government cannot assent to any religious test being ap to citizens of the United States by any power whatever. No offic the United States is constitutionally competent to admit the validi such a test. Hence, Mr. Heap's telegraphic instructions to Mr. F son that the Lubrowsky brothers should not yield to the order of e sion, unless force were employed, is approved as discreet and pr It is hoped that your anticipations may be realized, and that, in of the attitude taken by the legation, the matter may rest without ther proceedings against the parties."

Mr. Bayard, Sec. of State, to Mr. Cox, Oct. 15, 1885; MSS. Inst., Turkey; Rel., 1885.

As to persecution of Jews in Russia, see speech of Mr. S. S. Cox, July 31, pamphlet, library Dep. of State.

As to persecution of Jews in Roumania, see Senate Ex. Doc. No. 75, 42d C 2d sess.; as to correspondence with Great Britain as to persecution of see Brit. and For. State Papers, 1871–'2, vol. 62.

As to expulsion of offensive residents, see *infra*, § 206.

(12) NON-PROHIBITION OF PUBLICATIONS OR SUBSCRIPTIONS IN OF POLITICAL ACTION ABROAD.

§ 56.

That a neutral may permit free discussion, in his territory, in respect t ligerents, see *infra*, § 389.

As to expressions of sympathy with liberal political movements, see *supra*,

Libelous letters addressed in this country by a citizen of the Ur States to a foreign minister may be the subject of judicial prosecu but not of diplomatic interference.

Mr. Hunter, Acting Sec. of State, to Mr. Sartiges, May 22, 1852; MSS. N France. See Mr. Marcy, Sec. of State, to Mr. Sartiges, June 2, 1856.

"The Government of the United States have no jurisdiction ove press in the respective States, and if such jurisdiction existed, its

ercise with a view to prevent or to inflict punishment for any publication criticising or condemning the course of public measures in other countries, or in our own, would be an experiment upon the feeble forbearance, little likely to be made, and if made, sure to be defeated."

Mr. Cass, Sec. of State, to Mr. Molina, Nov. 26, 1860; MSS. Notes, Central America.

"Free discussion, by speech and in the press, in public assemblies, and in private conversation, of the Cretan insurrection, and of all other political transactions and movements occurring either abroad or at home, is among the rights and liberties guaranteed by the Constitution of the United States to every citizen and even to every stranger who sojourns among us, and is altogether exempt from any censure or injury on the part of the Government of the United States. The opponents of Crete and the friends of Turkey exercise very freely the same right. On the other hand, this Government makes no inquiry concerning what is preached, spoken, or written in Turkey, or in any other country, by the citizens or subjects thereof, although the matters discussed may be deeply interesting to the American people. The maxim was long since adopted in the United States that even error of opinion may be safely tolerated where reason is left free to combat it."

Mr. Seward, Sec. of State, to Blacque Bey, Jan. 20, 1869; MSS. Notes, Turkey.

The Executive of the United States cannot initiate proceedings for the prosecution of parties in New York charged with libeling foreign sovereigns.

Mr. Fish, Sec. of State, to Mr. Roberts, June 1, 1869; MSS. Notes, Spain.

"This Government and people feel nothing but detestation for such publications [prompting assassination and arson in England]. The question whether a journal making publications of the character of those referred to could or could not by process of law be suppressed, as calculated to lead to an infraction of our treaty engagements, or whether Congress could properly legislate on the subject, does not now demand the expression of an opinion. The Government of the United States knows the effect of the publications in question, and how to treat them. We have a large population of Irish people, and of those directly descended from them. They are attached to this country, obedient to its laws, and for the most part citizens of this Republic. They naturally have a friendship for their kinsmen in the United Kingdom, and perhaps a passive sympathy with them in the agitations in Ireland, but as their sympathy does not manifest itself in overt acts, we think it would not be wise by any governmental action to excite in them hostility towards a nation with which we are at peace, and thus disturb the cordiality which it is both the pleasure and the interest of this Republic to maintain with Her Majesty's Government. These considerations have weight and influence; but what is conclusive on the subject is that this Govern-

ment cannot consent, by its official notice, to emphasize, dignify, and give prominence to articles of the character complained of, which, while unnoticed, are impotent. Her Majesty's Government should, if satisfied with the friendly purpose of this Government, accord to it the right when it thinks its own interests are involved, of shaping its policy according to its own discretion. This right the Government of the United States must exercise."

Mr. Frelinghuysen, Sec. of State, to Mr. Lowell, Dec. 4, 1883; MSS. Inst., Great Britain.

"This Government is as deeply sensible as any other of the danger to all government and society from lawless combinations which may secretly plot assassination and destruction of life and property. At the same time it can only proceed against offenders, or suspected offenders, in accordance with law; and it is at least doubtful whether any law is now in existence in this country by which the publishers of the paper or papers in question can be called to account. I am not aware that such a law exists in any country. It is but recently that any law for the punishment of incitement to the commission of murder in foreign countries was placed on the British statute book.

"The present laws of the United States only aim to meet the cases of actual overt acts of hostility against a friendly nation when such acts are committed within the territory of the United States. So far as I remember, this is the full extent to which other nations have gone in this direction."

Mr. Frelinghuysen, Sec. of State, to Mr. Lowell, Nov. 24, 1884; MSS. Inst., Great Britain.

It was held in 1794, by Mr. Randolph, when Secretary of State, following the opinion of the Attorney-General, that a libel on the British minister is indictable at common law in the Federal courts.

Mr. Randolph, Sec. of State, to Mr. Harrison, Sept. 18, 1794; MSS. Dom. Let.

This view, however, was exploded by the subsequent rulings of the Supreme Court that the Federal court have no common-law criminal jurisdiction.

"In a charge by Chief Justice McKean, in Philadelphia, in 1791, the attention of the grand jury was called to certain publications of Cobbett and others, grossly attacking the King of Spain as the supple tool of the French nation. From this charge, the following passages are extracted:

"'At a time when misunderstandings prevail between the Republic of France and the United States, and when our General Government have appointed public ministers to endeavor to effect their removal, and restore the former harmony, some of the journals or newspapers in the city of Philadelphia have teemed with the most irritating invectives, couched in the most vulgar and opprobrious language, not only against the French nation and their allies, but the very men in power with whom the ministers of our country are sent to negotiate. These pub-

lications have an evident tendency, not only to frustrate a reconciliation, but to create a rupture and provoke a war between the sister Republics, and seem calculated to vilify,—nay, to subvert,—all republican Governments whatever.

"'Impressed with the duties of my station, I have used some endeavors for checking these evils, by binding over the editor and printer of one of them—licentious and virulent beyond all former example—to his good behavior; but he still perseveres in his nefarious publications. He has ransacked our language for terms of insult and reproach, and for the basest accusations against every ruler and distinguished character in France and Spain with whom we chance to have any intercourse, which it is scarce in nature to forgive. In brief, he braves his recognizance and the laws. It is now with you, gentlemen of the grand jury, to animadvert on his conduct. Without your aid it cannot be corrected. The Government that will not discountenance, may be thought to adopt it, and be justly chargeable with all the consequences.

"'Every nation ought to avoid giving any real offense to another. Some medals and dull jests are mentioned and represented as a ground of quarrel between the English and Dutch in 1672, and likewise called Louis the XIV to make an expedition into the United Provinces of the Netherlands in the same year, and nearly ruined the Commonwealth.

"'We are sorry to find our endeavors in this way have not been attended with all the good effects that were expected from them. However, we are determined to pursue the prevailing vice of the times with zeal and indignation, that crimes may no longer appear less odious for being fashionable, nor the more secure from punishment from being popular.' (See Whart. St. Tr., 325; Whart. Cr. L., § 1612*a*.)

"The bill against Cobbett was ignored by the grand jury, as, under the circumstances, might have been expected. The party contest between the friends of a French and the friends of an English alliance was then at its height, and never was there a party conquest more bitter and more unscrupulous. The prosecution was instituted no doubt by persons in sympathy with the Democratic party, and the bill was signed by Mr. Jared Ingersoll, then the Democratic attorney-general of Pennsylvania, and it was not to be expected that those members of the grand jury who detested France would give it their votes. But while this explains the ignoring of the bill against Cobbett, on the same principle as may be explained the verdict of acquittal in Bernard's case, the result does not in any way affect the authority of Chief Justice McKean's ruling as a matter of law. He was not only a learned, well-trained, and experienced lawyer, but he was thoroughly familiar with the history of our institutions, and with the relation of the States to the Federal Government and to European sovereignties. He had been for seventeen years a member of the Pennsylvania legislature. He was the only member of the Continental Congress who remained in continuous service during the whole Revolutionary war. He was a signer of the Declaration of Independence. He was President of the Congress in 1781. He was chief justice of Pennsylvania from 1777 to 1799, and during that long period he was regarded by the bar of Philadelphia, a bar of singular learning and cultivation, as a master in jurisprudence, and as a judge who never permitted himself to be swayed by partisan or personal temper. Nor was there at that time any dissent from the position that if libels on foreign countries were published in the State of Pennsylvania, it was the function of the State of Pennsylvania to prosecute the authors of these libels. Congress, in Mr.

Adams's administration, did not hesitate to pass a statute making 'seditious libels' indictable in Federal courts, but it limited its action to such libels as attacked the Federal system. Libels on foreign powers were left to the action of the several States, and within the jurisdiction of such States they still remain."

6 Crim. Law Mag., 176.

(13) CHARITABLE CONTRIBUTIONS ABROAD.

§ 56a.

Official contributions to charitable objects do not not fall within the range of Congressional or Executive power. But favors may be granted in aid of such objects by special passports, or, in certain cases, by remissions of duty. "Of such a character was the assistance rendered by the Government of the United States for transporting to Ireland the contributions of provisions spontaneously offered by the American people."

1 Halleck, Int. Law (by Baker), 407.

III. *INTERVENTION OF EUROPEAN SOVEREIGNS IN AFFAIRS OF THIS CONTINENT DISAPPROVED—MONROE DOCTRINE.*

§ 57.

The "Holy Alliance" took formal shape in a treaty signed at Paris on September 26, 1815, between the Emperors of Austria and of Russia and the King of Prussia, acting as absolute sovereigns, without the intervention of responsible ministers or diplomatic agents. Great Britain took no part in this alliance (although George IV, then Prince Regent, no doubt personally sympathized with it), for the reason that by the constitution of Great Britain the sovereign can only act through responsible ministers. The ostensible object of the alliance was the subordination of politics to the Christian religion. The real principle, however, was the establishment of *jure divino* autocracies, each sovereign incorporating in himself "the Christian religion" as well as supreme political power. Had the three sovereigns who originated the scheme been able to agree, they might have dominated the civilized world. But, from the nature of things, three *jure divino* autocrats, each claiming for his opinions divine authority, could not be expected to agree permanently; and so it ultimately turned out.

Mr. Canning, in his correspondence with Mr. Rush, our minister in England, in 1823, having suggested that the United States should take decided ground against the intervention of the Holy Alliance in South America, Mr. Monroe sent the papers to Mr. Jefferson, asking his advice. To this request Mr. Jefferson answered as follows:

"MONTICELLO, *October* 24, 1823.

"DEAR SIR: The question presented by the letters you have sent me is the most momentous which has ever been offered to my contemplation since that of Independence. That made us a nation; this sets our compass and points the course which we are to steer through the ocean of time opening on us. And never could we embark upon it un-

der circumstances more auspicious. Our first and fundamental maxim should be never to entangle ourselves in the broils of Europe; our second, never to suffer Europe to intermeddle with cis-Atlantic affairs. America, North and South, has a set of interests distinct from those of Europe, and peculiarly her own. She should, therefore, have a system of her own, separate and apart from that of Europe. While the last is laboring to become the domicile of despotism, our endeavor should surely be to make our hemisphere that of freedom.

"One nation, most of all, could disturb us in this pursuit; she now offers to lead, aid, and accompany us in it. By acceding to her proposition we detach her from the bands, bring her mighty weight into the scale of free government, and emancipate a continent at one stroke, which might otherwise linger long in doubt and difficulty. Great Britain is the nation which can do us the most harm of any one or all on earth, and with her on our side we need not fear the whole world. With her, then, we should most seduously cherish a cordial friendship, and nothing would tend more to knit our affections than to be fighting once more side by side in the same cause. Not that I would purchase even her amity at the price of taking part in her wars.

"But the war in which the present proposition might engage us, should that be its consequence, is not her war, but ours. Its object is to introduce and establish the American system of keeping out of our land all foreign powers—of never permitting those of Europe to intermeddle with the affairs of our nations. It is to maintain our own principle, not to depart from it; and if, to facilitate this, we can effect a division in the body of the European powers and draw over to our side its most powerful member, surely we should do it. But I am clearly of Mr. Canning's opinion that it will prevent instead of provoking war. With Great Britain withdrawn from their scale and shifted into that of our two continents, all Europe combined would not undertake such a war, for how would they propose to get at either enemy without superior fleets? Nor is the occasion to be slighted which this proposition offers of declaring our protest against the atrocious violations of the rights of nations by the interference of any one in the internal affairs of another so flagitiously begun by Bonaparte, and now continued by the equally lawless Alliance calling itself Holy.

"But we have first to ask ourselves a question. Do we wish to acquire to our own confederacy any one or more of the Spanish provinces? I candidly confess that I have ever looked on Cuba as the most interesting addition which could ever be made to our system of States. The control which, with Florida Point, this island would give us over the Gulf of Mexico and the countries and isthmus bordering on it, as well as all those whose waters flow into it, would fill up the measure of our political well-being. Yet, as I am sensible that this can never be obtained, even with her own consent, but by war, and its independence, which is our second interest (and especially its independence of England), can be secured without it, I have no hesitation in abandoning my first wish to future chances, and accepting its independence, with peace and the friendship of England, rather than its association at the expense of war and her enmity.

"I could honestly, therefore, join in the declaration proposed that we aim not at the acquisition of any of those possessions—that we will not stand in the way of any amicable arrangement between them and the mother country—but that we will oppose with all our means the forcible

interposition of any other power as auxiliary, stipendiary, or under any other form or pretext, and most especially their transfer to any power by conquest, cession, or acquisition in any other way. I should think it, therefore, advisable that the Executive should encourage the British Government to a continuance in the dispositions expressed in these letters by an assurance of his concurrence with them as far as his authority goes, and that as it may lead to war, the declaration of which requires an act of Congress, the case shall be laid before them for consideration at their first meeting, and under the reasonable aspect in which it is seen by himself.

"I have been so long weaned from political subjects, and have so long ceased to take any interest in them, that I am sensible I am not qualified to offer opinions on them worthy of any attention; but the question now proposed involves consequences so lasting, and effects so decisive of our future destinies, as to rekindle all the interest I have heretofore felt on such occasions, and to induce me to the hazard of opinions which will prove only my wish to contribute still my mite toward anything which may be useful to our country. And, praying you to accept it at only what it is worth, I add the assurance of my constant and affectionate friendship and respect."

7 Jeff. Works, 315.

Mr. Madison, being consulted at the same time, through Mr. Jefferson, answered as follows:

TO PRESIDENT MONROE.

OCTOBER 30, 1823.

"DEAR SIR: I have just received from Mr. Jefferson your letter to him, with the correspondence between Mr. Canning and Mr. Rush, sent for his and my perusal and our opinions on the subject of it.

"From the disclosures of Mr. Canning, it appears, as was otherwise to be inferred, that the success of France against Spain would be followed by an attempt of the holy allies to reduce the revolutionized colonies of the latter to their former dependence.

"The professions we have made to these neighbors, our sympathies with their liberties and independence, the deep interest we have in the most friendly relations with them, and the consequences threatened by a command of their resources by the great powers, confederated against the rights and reforms of which we have given so conspicuous and persuasive an example, all unite in calling for our efforts to defeat the meditated crusade. It is particularly fortunate that the policy of Great Britain, though guided by calculations different from ours, has presented a co-operation for an object the same with ours. With that co-operation we have nothing to fear from the rest of Europe, and with it the best assurance of success to our laudable views. There ought not, therefore, to be any backwardness, I think, in meeting her in the way she has proposed, keeping in view, of course, the spirit and forms of the Constitution in every step taken in the road to war, which must be the last step if those short of war should be without avail.

"It cannot be doubted that Mr. Canning's proposal, though made with the air of consultation, as well as concert, was founded on a predetermination to take the course marked out, whatever might be the reception given here to his invitation. But this consideration ought not to

divert us from what is just and proper in itself. Our co-operation is due to ourselves and to the world, and while it must insure success in the event of an appeal to force, it doubles the chance of success without that appeal. It is not improbable that Great Britain would like best to have the merit of being the sole champion of her new friends, notwithstanding the greater difficulty to be encountered, but for the dilemma in which she would be placed. She must, in that case, either leave us, as neutrals, to extend our commerce and navigation at the expense of hers, or make us enemies by renewing her paper blockades and other arbitrary proceedings on the ocean. It may be hoped that such a dilemma will not be without a permanent tendency to check her proneness to unnecessary wars.

"Why the British Cabinet should have scrupled to arrest the calamity it now apprehends by applying to the threats of France against Spain the small effort which it scruples not to employ in behalf of Spanish America, is best known to itself. It is difficult to find any other explanation than that interest in the one case has more weight in its casuistry than principle had in the other.

"Will it not be honorable to our country, and possibly not altogether in vain, to invite the British Government to extend the 'avowed disapprobation' of the project against the Spanish colonies to the enterprise of France against Spain herself, and even to join in some declaratory act in behalf of the Greeks? On the supposition that no form could be given to the act clearing it of a pledge to follow it up by war, we ought to compare the good to be done with the little injury to be apprehended to the United States, shielded as their interests would be by the power and the fleets of Great Britain united with their own. These are questions, however, which may require more information than I possess, and more reflection than I can now give them.

"What is the extent of Mr. Canning's disclaimer as to the 'remaining possessions of Spain in America. Does it exclude future views of acquiring Porto Rico, &c., as well as Cuba? It leaves Great Britain free, as I understand it, in relation to other quarters of the globe."

TO MR. JEFFERSON.

MONTPELIER, *November* 1, 1823.

"DEAR SIR: I return the letter of the President. The correspondence from abroad has gone back to him, as you desired. I have expressed to him my concurrence in the policy of meeting the advances of the British Government, having an eye to the forms of our Constitution in every step in the road to war. With the British power and navy combined with our own, we have nothing to fear from the rest of the world, and in the great struggle of the epoch between liberty and despotism, we owe it to ourselves to sustain the former, in this hemisphere at least. I have even suggested an invitation to the British Government to join in applying the "small effort for so much good" to the French invasion of Spain, and to make Greece an object of some such favorable attention. Why Mr. Canning and his colleague did not sooner interpose against the calamity, which could not have escaped foresight, cannot be otherwise explained but by the different aspect of the question when it related to liberty in Spain, and to the extension of British commerce to her former colonies."

3 Madison's Writings, 339.

The following is from a "private" letter from Mr. Canning, on December 21, 1823, to Sir William à Court, British minister at Spain (Stapleton's Canning and his Times, 395): "Monarchy in Mexico and monarchy in Brazil would cure the evils of universal democracy and prevent the drawing of demarkation which I most dread—America *vs.* Europe. The United States, naturally enough, aim at this division, and cherish the democracy which leads to it. But I do not much apprehend their influence, even if I believe (which I do not altogether) in all the reports of their activity in America. Mexico and they are too neighborly to be friends. In the meanwhile they have aided us materially. * * * While I was yet hesitating (in September) what shape to give to the declaration and protest which ultimately was conveyed in my conference with P. de Polignac, and while I was more doubtful as to the effect of that protest and declaration, I sounded Mr. Rush (the American minister here) as to his powers and disposition to join in any step which we might take to prevent a hostile enterprise on the part of the European powers against Spanish America. He had no powers; but he would have taken upon himself to join with us, if we would have begun by recognizing the Spanish-American States. This we could not do, and so we went on without. But I have no doubt that his report to his Government of this *sounding*, which he probably represented as an overture, had a great share in producing the explicit declaration of the President."

As Mr. Stapleton remarks, Mr. Canning's position was simply that Great Britain would not permit other European powers to interfere on behalf of Spain in her contest with her American colonies. So far from assenting to the position that the "unoccupied parts of America are no longer open to colonization from Europe," he held that "the United States had no right to take umbrage at the establishment of new colonies from Europe on any such unoccupied parts of the American continent."

The Holy Alliance, at the period when Mr. Canning's conference with Mr. Rush took place, acted vigorously. They united in sustaining the Bourbons in Naples, where they re-established the Bourbon dynasty on the basis of absolutism, against the faint protest of France and the sullen disapproval of England. Meeting again at Verona in 1822, they guaranteed the intervention of France in Spain, although the British ministry gave still more ominous signs of disapproval, which finally exhibited themselves in utterances of the British cabinet to the effect that they would not look with indifference at any intervention of the Alliance in the affairs of South America. It is by the possibility of the Alliance undertaking such intervention that the correspondence here given is to be explained. The Government of the United States was determined to resist such intervention, and in such resistance, if wisely conducted, it had every reason to expect the assistance of Great Britain. The terms, however, in which this position was expressed by Mr. Monroe differed only in form from those in which the relations of the United States to European Governments had been defined previously by Mr. Jefferson. Mr. Jefferson to Mr. Short, Nov. 24, 1791, 3 Jeff. Works, 302; to Mr. Paine, March 18, 1801–'4, *id.*, 370; to Mr. Short, Oct. 3, 1801–'4, *id.*, 413; see *supra*, § 45.

The Emperor of Russia having suggested, early in 1820, that the United States should join the Holy Alliance, the following response was made: "The political system of the United States is essentially

extra-European. To stand in firm and cautious independence of all entanglement in the European system, has been a cardinal point of their policy under every administration of their Government from the peace of 1783 to this day." For this, if for no other reasons, the request of Russia, that the United States should become a party to the Holy Alliance, should be declined.

Mr. J. Q. Adams, Sec. of State, to Mr. Middleton, July 5, 1820; MSS. Inst., Russia.

In Mr. Monroe's seventh annual message, delivered on December 2, 1823, the doctrine, afterwards called by his name, was thus expressed:

"At the proposal of the Russian Imperial Government, made through the minister of the Emperor residing here, a full power and instructions have been transmitted to the minister of the United States at St. Petersburg to arrange, by amicable negotiation, the respective rights and interests of the two nations on the northwest coast of this continent. A similar proposal had been made by his Imperial Majesty to the Government of Great Britain, which has likewise been acceded to. The Government of the United States has been desirous, by this friendly proceeding, of manifesting the great value which they have invariably attached to the friendship of the Emperor, and their solicitude to cultivate the best understanding with his Government. In the discussions to which this interest has given rise and in the arrangements by which they may terminate, the occasion has been judged proper for asserting, as a principle in which the rights and interests of the United States are involved, that the American continents, by the free and independent condition which they have assumed and maintain, are henceforth not to be considered as subjects for future colonization by any European powers.

"It was stated at the commencement of the last session that a great effort was then making in Spain and Portugal to improve the condition of the people of those countries, and that it appears to be conducted with extraordinary moderation. It need scarcely be remarked that the result has been so far very different from what was then anticipated. Of events in that quarter of the globe, with which we have so much intercourse, and from which we derive our origin, we have always been anxious and interested spectators. The citizens of the United States cherish sentiments the most friendly in favor of the liberty and happiness of their fellow-men on that side of the Atlantic. In the wars of the European powers, in matters relating to themselves, we have never taken any part, nor does it comport with our policy to do so. It is only when our rights are invaded or seriously menaced that we resent injuries or make preparation for our defense. With the movements in this hemisphere we are of necessity more immediately connected, and by causes which must be obvious to all enlightened and impartial observers.

"The political system of the allied powers is essentially different in this respect from that of America. This difference proceeds from that

which exists in their respective Governments. And to the defense of our own, which has been achieved by the loss of so much blood and treasure, and matured by the wisdom of their most enlightened citizens, and under which we have enjoyed unexampled felicity, this whole nation is devoted. We owe it, therefore, to candor and to the amicable relations existing between the United States and those powers to declare that we should consider any attempt on their part to extend their system to any portion of this hemisphere as dangerous to our peace and safety. With the existing colonies or dependencies of any European power we have not interfered, and shall not interfere. But with the Governments who have declared their independence and maintained it, and whose independence we have, on great consideration and on just principles, acknowledged, we could not view any interposition for the purpose of oppressing them, or controlling in any other manner their destiny, by any European power, in any other light than as the manifestation of an unfriendly disposition toward the United States. In the war between those new Governments and Spain we declared our neutrality at the time of their recognition, and to this we have adhered, and shall continue to adhere, provided no change shall occur which, in the judgment of the competent authorities of this Government, shall make a corresponding change on the part of the United States indispensable to their security.

"The late events in Spain and Portugal show that Europe is still unsettled. Of this important fact no stronger proof can be adduced than that the allied powers should have thought it proper, on a principle satisfactory to themselves, to have interposed by force in the internal concerns of Spain. To what extent such interposition may be carried on the same principle is a question to which all independent powers whose Governments differ from theirs are interested, even those most remote, and surely none more so than the United States. Our policy in regard to Europe, which was adopted at an early stage of the wars which have so long agitated that quarter of the globe, nevertheless remains the same, which is not to interfere in the internal concerns of any of its powers; to consider the Government de facto as the legitimate Government for us; to cultivate friendly relations with it, and to preserve those relations by a frank, firm, and manly policy; meeting, in all instances, the just claims of every power, submitting to injuries from none. But in regard to these continents, circumstances are eminently and conspicuously different. It is impossible that the allied powers should extend their political system to any portion of either continent without endangering our peace and happiness; nor can any one believe that our southern brethren, if left to themselves, would adopt it of their own accord. It is equally impossible, therefore, that we should behold such interposition, in any form, with indifference. If we look to the comparative strength and resources of Spain and those new Governments, and their distance from each other, it must be obvious that she

can never subdue them. It is still the true policy of the United States to leave the parties to themselves, in the hope that other powers will pursue the same course."

"I did not leave Mr. de Chateaubriand (French minister for foreign affairs) without adverting to the affairs of Spain. That our sympathies were entirely on her side, and that we considered the war made on her by France unjust, I did not pretend to conceal; but I added that the United States would undoubtedly preserve their neutrality, provided it was respected, and avoid every interference with the politics of Europe. * * * But I had reason to believe that, on the other hand, they would not suffer others to interfere against the emancipation of America."

Mr. Gallatin, minister to France, to Mr. J. Q. Adams, Sec. of State, June 24, 1823; 2 Gallatin's Writings, 271.

"At the office Baron Tuyl came. I told him specially that we should contest the right of Russia to *any* territorial establishment on this continent, and that we should assume distinctly the principle that the American continents are no longer subjects for any *new* colonial establishments."

Mr. J. Q. Adams's Memoirs, July 17, 1823; 6 J. Q. Adams's Memoirs, 163.
As to Mr. Adams's part in formulating the "Monroe doctrine," see 82 N. Am. Rev., 494; Tucker's Monroe Doct., 12–14, 21, 40, 111.

"January 6. In a dispatch to the Secretary of State of this date, I mention Mr. Canning's desire that the negotiation at St. Petersburg, on the Russian ukase of September, 1821, respecting the Northwest coast, to which the United States and England had equally objected, should proceed separately, and not conjointly, by the three nations, as proposed by the United States, and my acquiescence in this course. It being a departure from the course my Government had contemplated, I give the following reasons for it:

"1. That whatever force of argument I might be able to give to the principle of non-colonization as laid down in the President's message, which had arrived in England since my instructions for the negotiation, my opinion was that it would still remain a subject of contest between the United States and England; and that as, by all I could learn since the message arrived, Russia also dissented from the principle, a negotiation at St. Petersburg relative to the Northwest coast, to which the three nations were parties, might place Russia on the side of England and against the United States, this, I thought, had better be avoided.

"2. That a preliminary and detached discussion of so great a principle, against which England protested *in limine*, brought on by me when her foreign secretary was content to waive the discussion at present and preferred doing so, might have an unpropitious influence on other parts of the negotiation of more immediate and practical interest.

"3. That by abstaining from discussing it at present nothing was given up. The principle, as promulgated in the President's message, would remain undiminished as notice to other nations and a guide to me in the general negotiation with England when that came on."

Rush, Residence at the Court of London; as quoted in 83 N. Am. Rev. (April, 1856), 508.

"This message of President Monroe reached England while the correspondence between Mr. Canning and the Prince Polignac was in prog-

ress; and it was received not only with satisfaction but with enthusiasm. Mr. Brougham said: 'The question with regard to South America is now, I believe, disposed of, or nearly so; for an event has recently happened than which none has ever dispersed greater joy, exultation, and gratitude over all the free men of Europe; that event, which is decisive on the subject, is the language held with respect to Spanish America in the message of the President of the United States.' Sir James Mackintosh said: 'This coincidence of the two great English commonwealths (for so I delight to call them; and I heartily pray that they may be forever united in the cause of justice and liberty) cannot be contemplated without the utmost pleasure by every enlightened citizen of the earth.' This attitude of the American Government gave a decisive support to that of Great Britain, and effectually put an end to the designs of the absolutist powers of the continent to interfere with the affairs of Spanish America. Those dynasties had no disposition to hazard a war with such a power, moral and material, as Great Britain and the United States would have presented, when united, in the defense of independent constitutional governments.

"It is to be borne in mind that the declarations known as the Monroe doctrine have never received the sanction of an act or resolution of Congress, nor have they any of that authority which European Governments attach to a royal ordinance. They are, in fact, only the declarations of an existing Administration of what its own policy would be, and what it thinks should ever be the policy of the country, on a subject of paramount and permanent interest. Thus, at the same session in which the message was delivered, Mr. Clay introduced the following resolution: 'That the people of these States would not see, without serious inquietude, any forcible interposition by the allied powers of Europe, in behalf of Spain, to reduce to their former subjection those parts of the continent of America which have proclaimed and established for themselves, respectively, independent governments, and which have been solemnly recognized by the United States.' But this resolution was never brought up for action or discussion. It is seen, also, by the debates on the Panama mission and the Yucatan intervention, that Congress has never been willing to commit the nation to any compact or pledge on this subject, or to any specific declaration of purpose or methods, beyond the general language of the message.

"In the debates on the Clayton-Bulwer treaty, in 1855–'56, above referred to, all the speakers seemed to agree to this position of the subject. Mr. Clayton said: 'In reference to this particular territory, I would not hesitate at all, as one Senator, to assert the Monroe doctrine and maintain it by my vote; but I do not expect to be sustained in such a vote by both branches of Congress. Whenever the attempt has been made to assert the Monroe doctrine in either branch of Congress, it has failed. The present Democratic party came into power, after the debate on the Panama mission, on the utter abnegation of the whole doctrine, and stood upon Washington's doctrine of non-intervention. You cannot prevail on a majority, and I will venture to say that you cannot prevail on one-third of either house of Congress to sustain it.' Mr. Cass said: 'Whenever the Monroe doctrine has been urged, either one or the other house of Congress, or both houses, did not stand up to it.' Mr. Seward said: 'It is true that each house of Congress has declined to assert it; but the honorable Senators must do each house the justice to acknowledge that the reason why they did decline to assert the doctrine was, that it was proposed, as many members thought, as an ab-

straction, unnecessary, not called for at the time.' Mr. Mason spoke of it as having 'never been sanctioned or recognized by any constitutional authority.' Mr. Cass afterwards, in a very elaborate speech (of January 28, 1856), gave his views of the history and character of the doctrine. He placed it upon very high ground, as a declaration not only against European intervention or future colonization, but against the acquisition of dominion on the continent by European powers, by whatever mode or however derived; and seemed to consider it as a pledge to resist such a result by force, if necessary, in any part of the continent. He says: 'We ought years ago, by Congressional interposition, to have made this system of policy an American system, by a solemn declaration; and if we had done so, we should have spared ourselves much trouble and no little mortification.' Referring to Mr. Polk's message, in 1845, he said there was then an opportunity for Congress to adopt the doctrine, not as an abstraction, but on a practical point. 'We refused to say a word; and, I repeat, we refused then even to take the subject into consideration.' He denied the correctness of Mr. Calhoun's explanation (*vide supra*), and contended that the non-colonization clause was intended to be, and understood by England to be, a foreclosure of the whole continent against all future European dominion, however derived. It may well be said, however, and such seems now to be the prevalent opinion, that the complaints of Mr. Cass and others of his school, of the neglect and abandonment of the Monroe doctrine, apply rather to their construction of the doctrine than to the doctrine itself. * * *

"It has sometimes been assumed that the Monroe doctrine contained some declaration against any other than democratic-republican institutions on this continent, however arising or introduced. The message will be searched in vain for anything of the kind. We were the first to recognize the imperial authority of Dom Pedro, in Brazil, and of Iturbide in Mexico; and more than half the northern continent was under the scepters of Great Britain and Russia; and these dependencies would certainly be free to adopt what institutions they pleased, in case of successful rebellion, or of peaceful separation from their parent states. (See Mr. Seward's correspondence respecting Mexico, from 1862 to 1866, as illustrative of the position of the United States at the present time on this subject, given at length in note 41 to §76, *infra*.)

"As a summary of this subject, it would seem that the following positions may be safely taken:

"I. The declarations upon which Mr. Monroe consulted Mr. Jefferson and his Cabinet related to the interposition of European powers in the affairs of American States.

"II. The kind of interposition declared against was that which may be made for the purpose of controlling their political affairs, or of extending to this hemisphere the system in operation upon the continent of Europe, by which the great powers exercise a control over the affairs of other European states.

"III. The declarations do not intimate any course of conduct to be pursued in case of such interpositions, but merely say that they would be 'considered as dangerous to our peace and safety,' and as 'the manifestation of an unfriendly disposition towards the United States,' which it would be impossible for us to 'behold with indifference;' thus leaving the nation to act at all times as its opinion of its policy or duty might require.

"IV. The declarations are only the opinion of the administration of 1823, and have acquired no legal force or sanction.

"V. The United States has never made any alliance with, or pledge to, any other American state on the subject covered by the declarations.

"VI. The declaration respecting non-colonization was on a subject distinct from European intervention with American states, and related to the acquisition of sovereign title by any European power, by new and original occupation or colonization thereafter. Whatever were the political motives for resisting such colonization, the principle of public law upon which it was placed was, that the continent must be considered as already within the occupation and jurisdiction of independent civilized nations."

Dana's Wheaton; § 67, note 36.

The position that Mr. Monroe's declaration "was intended as a caveat to the designs of the allies, and as an earnest protest against the extension to this continent of 'the political system' on which they were based" is supported at length in 82 N. Am. Rev., 483 (April, 1856). See 103 *id.*, 471, (Oct., 1866).

The failure to obtain Congressional approval for Mr. Clay's resolution "that the people of these States would not see, without serious inquietude, forcible interposition by the allied powers of Europe, on behalf of Spain," in South America, is noticed and explained in 82 N. Am. Rev., 488 (April, 1856).

"The other principle asserted in the message is that whilst we do not desire to interfere in Europe with the political system of the allied powers we should regard as dangerous to our peace and safety any attempt on their part to extend their system to any portion of this hemisphere. The political systems of the two continents are essentially different. Each has an exclusive right to judge for itself what is best suited to its own condition, and most likely to promote its happiness, but neither has a right to enforce upon the other the establishment of its peculiar system. This principle was declared in the face of the world, at a moment when there was reason to apprehend that the allied powers were entertaining designs inimical to the freedom, if not the independence, of the new governments. There is a ground for believing that the declaration of it had considerable effect in preventing the maturity, if not in producing the abandonment of all such designs. Both principles were laid down after much and anxious deliberation on the part of the late administration. The President, who then formed a part of it, continues entirely to coincide in both. And you will urge upon the Government of Mexico the utility and expediency of asserting the same principles on all proper occasions."

Mr. Clay, Sec. of State, to Mr. Poinsett, Mar. 26, 1825; MSS. Inst. Ministers.

The same position was taken by Mr. Clay in letters to the Ministers to other South American states.

"The late President of the United States, in his message to Congress of the 2d of December, 1823, while announcing the negotiation then pending with Russia, relating to the northwest coast of this continent, observes that the occasion of the discussions to which that incident had given rise, had been taken for asserting, as a principle in which the rights and interests of the United States were involved, that the American continents, by the free and independent condition which they had

assumed and maintained, were thenceforward not to be considered subjects for colonization by any European power. The principle had first been assumed in that negotiation with Russia. It rested upon a course of reasoning, equally simple and conclusive. With the exception of the existing European colonies, which it was in nowise intended to disturb, the two continents consisted of several sovereign and independent nations, whose territories covered their whole surface. By this, their independent condition, the United States enjoyed the right of commercial intercourse with every part of their possessions. To attempt the establishment of a colony in those possessions, would be to usurp, to the exclusion of others, a commercial intercourse which was the common possession of all. It could not be done without encroaching upon existing rights of the United States. The Government of Russia has never disputed these positions, nor manifested the slightest dissatisfaction at their having been taken. Most of the new American republics have declared their entire assent to them; and they now propose, among the subjects of consultation at Panama, to take into consideration the means of making effectual the assertion of that principle, as well as the means of resisting interference from abroad with the domestic concerns of the American governments."

President John Q. Adams's Special Message, March 15, 1826.

As to Congress of Panama, see House Doc. No. 443, 19th Cong., 2d sess.; 6 Am. State Papers (For. Rel.), 356 *ff*.

President J. Q. Adams's Message of Dec. 26, 1825, giving the proceedings of the Executive as to the Panama mission, and the reasons therefor, together with the action of the Senate thereon, is contained in Sen. Ex. Doc. No. 403, 19th Cong., 1st sess.; 5 Am. State Papers (For. Rel.), 834.

The commissions of Messrs. Anderson and Sergeant, March 14, 1826, ministers to Panama, are given in Senate Doc. No. 450, 19th Cong., 2d sess.

The report of Mr. Clay, Sec. of State, of Jan. 31, 1827, as to the salaries and duties of the ministers to Panama in 1826, is contained in House Doc. No. 452, 19 Cong., 2d sess.; 6 Am. State Papers (For. Rel.), 554.

"'The congress of Panama, in 1826, was planned by Bolivar to secure the union of Spanish America against Spain. It had originally military as well as political purposes. In the military objects the United States could take no part; and indeed the necessity for such objects ceased when the full effects of Mr. Monroe's declarations were felt. But the specific objects of the Congress, the establishment of close and cordial relations of amity, the creation of commercial intercourse, of interchange of political thought, and of habits of good understanding between the new Republics and the United States and their respective citizens, might perhaps have been attained had the Administration of that day received the united support of the country. Unhappily they were lost; the new States were removed from the sympathetic and protecting influence of our example, and their commerce, which we might then have secured, passed into other hands unfriendly to the United States.

"'In looking back upon the Panama Congress from this length of time it is easy to understand why the earnest and patriotic men who endeavored to crystallize an American system for this continent failed. * * * One of the questions proposed for discussion in the conference

was "The consideration of the means to be adopted for the entire abolition of the African slave trade," to which proposition the committee of the United States Senate of that day replied: "The United States have not certainly the right, and ought never to feel the inclination, to dictate to others who may differ with them upon this subject; nor do the committee see the expediency of insulting other states with whom we are maintaining relations of perfect amity, by ascending the moral chair, and proclaiming from thence mere abstract principles, of the rectitude of which each nation enjoys the perfect right of deciding for itself." The same committee also alluded to the possibility that the condition of the islands of Cuba and Porto Rico, still the possessions of Spain, and still slaveholding, might be made the subject of discussion and of contemplated action by the Panama congress. "If ever the United States (they said) permit themselves to be associated with these nations in any general Congress assembled for the discussion of common plans in any way affecting European interests, they will, by such act, not only deprive themselves of the ability they now possess of rendering useful assistance to the other American states, but also produce other effects prejudicial to their interests."'

"The printed correspondence respecting this mission will be found in the fifth volume of the Foreign Relations, folio edition, pages 834–905. It was the subject of animated discussion in Congress, which will be found in the second part of the second volume of the Register of Congressional Debates for the year 1826."

Mr. J. C. B. Davis, Notes, &c.

"The amount of it [Mr. Monroe's declaration] was that this Government could not look with indifference on any combination to assist Spain in her war against the South American states; that we could not but consider any such combination as dangerous or unfriendly to us; and that if it should be formed it would be for the competent authorities of this Government to decide, when the case arose, what course our duty and our interest should require us to pursue."

Mr. Webster, Mar. 27, 1826, in House of Rep.; 2 Deb. of 1826, 1807.

"In December, 1823, the then President of the United States, in his annual message upon the opening of Congress, announced as a principle applicable to this continent, which ought hereafter to be insisted on, that no European nation ought to be allowed to plant upon it new colonies. It was not proposed by that principle to disturb pre-existing European colonies already established in America; the principle looked forward, not backward."

Mr. Clay, Sec. of State, to Messrs. Anderson and Sergeant, May 8, 1826; MSS. Inst. Ministers.

"It [the Monroe doctrine] has been said, in the course of this debate, to have been a loose and vague declaration. It was, I believe, sufficiently studied. I have understood, from good authority, that it was considered, weighed, and distinctly and decidedly approved by every one of the President's advisers at that time. Our Government could not adopt on that occasion precisely the course which England had taken. England threatened the immediate recognition of the provinces if the allies should take part with Spain against them. We had already recognized them. It remained, therefore, only for our Government to

say how we should consider a combination of the allied powers to effect objects in America as affecting ourselves; and the message was intended to say what it does say, that we should regard such combination as dangerous to us. Sir, I agree with those who maintain the proposition, and I contend against those who deny it, that the message did mean something; that it meant much; and I maintain against both, that the declaration effected much good, answered the end designed by it, did great honor to the foresight and the spirit of the Government, and that it cannot now be taken back, retracted, or annulled without disgrace. It met, sir, with the entire concurrence and the hearty approbation of the country. The tone which it uttered found a corresponding response in the breasts of the free people of the United States. That people saw, and they rejoiced to see, that, on a fit occasion, our weight had been thrown into the right scale, and that, without departing from our duty, we had done something useful, and something effectual, for the cause of civil liberty. One general glow of exultation, one universal feeling of the gratified love of liberty, one conscious and proud perception of the consideration which the country possessed, and of the respect and honor which belonged to it, pervaded all bosoms. Possibly the public enthusiasm went too far; it certainly did go far; but, sir, the sentiment which this declaration inspired was not confined to ourselves. Its force was felt everywhere by all those who could understand its object and foresee its effect. In that very House of Commons of which the gentleman from South Carolina has spoken with such commendation, how was it received? Not only, sir, with approbation, but, I may say, with no little enthusiasm. While the leading minister [Mr. Canning] expressed his entire concurrence in the sentiments and opinions of the American President, his distinguished competitor [Mr. Brougham] in that popular body, less restrained by official decorum, and more at liberty to give utterance to all the feeling of the occasion declared that no event had ever created greater joy, exultation, and gratitude among all the free men in Europe; that he felt pride in being connected by blood and language with the people of the United States; that the policy disclosed by the message became a great, a free, and an independent nation; and that he hoped his own country would be prevented by no mean pride or paltry jealousy from following so noble and glorious an example.

"It is doubtless true, as I took occasion to observe the other day, that this declaration must be considered as founded on our rights, and to spring mainly from a regard to their preservation. It did not commit us, at all events, to take up arms on any indication of hostile feeling by the powers of Europe towards South America. If, for example, all the states of Europe had refused to trade with South America until her states should return to their former allegiance, that would have furnished no cause of interference to us. Or if an armament had been furnished by the allies to act against provinces the most remote from us, as Chili or Buenos Ayres, the distance of the scene of action diminishing our apprehension of danger, and diminishing also our means of effectual interposition, might still have left us to content ourselves with remonstrance. But a very different case would have arisen, if an army, equipped and maintained by these powers, had been landed on the shores of the Gulf of Mexico, and commenced the war in our immediate neighborhood. Such an event might justly be regarded as dangerous to ourselves, and, on that ground, call for decided and immediate interference by us. The sentiments and the policy announced by the declara-

tion, thus understood, were, therefore, in strict conformity to our d and our interest."

Mr. Webster's speech on the Panama mission, April 14, 1826.; 3 Webster's V 203.

When the question of the Panama Congress was before Cong the following resolution, on motion of Mr. Buchanan, passed the E of Representatives by a vote of 99 to 95:

"It is, therefore, the opinion of this House that the Governme the United States ought not to be represented at the Congress of ama, except in a diplomatic character; nor ought they to form ar liance, offensive or defensive, or negotiate respecting such alli with all or any of the South American Republics; nor ought th become parties with them, or either of them, to any joint declaratio the purpose of preventing the interference of any of the European ers with their independence or form of government, or to any pact for the purpose of preventing colonization upon the continer America; but that the people of the United States should be left to act, in any crisis, in such manner as their feelings of friendshi wards these Republics, and as their own honor and policy, may a time dictate."

See 82 North Am. Rev. (Apr., 1856), 507.

As to subsequent failures to obtain Congressional recognition of the "M doctrine," see Tucker's Monr. Doct., 56.

The Panama Congress is discussed in 1 Calvo., Droit Int., 2d ed., 255.

"It is well known to the American people and to all nations this Government has never interfered with the relations subsistin tween other Governments. We have never made ourselves parti their wars or their alliances; we have not sought their territori conquest; we have not mingled with parties in their domestic strug and believing their own form of government to be the best, we never attempted to propagate it by intrigues, by diplomacy, or by f We may claim on this continent a like exemption from European i ference. The nations of America are equally sovereign and inde ent with those of Europe. They possess the same rights, indepen of all foreign interposition, to make war, to conclude peace, and to r late their internal affairs. The people of the United States ca therefore, view with indifference attempts of European powers to i fere with the independent action of the nations on this continent. American system of government is entirely different from that of rope. Jealousy among the different sovereigns of Europe, lest an of them might become too powerful for the rest, has caused them iously to desire the establishment of what they term the 'balan power.' It cannot be permitted to have any application on the N American continent, and especially to the United States. We r ever maintain the principle that the people of this continent alone l the right to decide their own destiny. Should any portion of them, stituting an independent state, propose to unite themselves with confederacy, this will be a question for them and us to determine, v

out any foreign interposition. We can never consent that European powers shall interfere to prevent such a union, because it might disturb the 'balance of power' which they may desire to maintain upon this continent. Near a quarter of a century ago the principle was distinctly announced to the world, in the annual message of one of my predecessors, that 'the American continents, by the free and independent condition which they have assumed and maintain, are henceforth not to be considered as subjects for future colonization by any European power.' This principle will apply with greatly increased force, should any European power attempt to establish any new colony in North America. In the existing circumstances of the world, the present is deemed a proper occasion to reiterate and reaffirm the principle avowed by Mr. Monroe, and to state my cordial concurrence in its wisdom and sound policy. The reassertion of this principle, especially in reference to North America, is, at this day, but the promulgation of a policy which no European power should cherish the disposition to resist. Existing rights of every European nation should be respected; but it is due alike to our safety and our interests that the efficient protection of our laws should be extended over our whole territorial limits, and that it should be distinctly announced to the world as our settled policy that no future European colony or dominion shall, with our consent, be planted or established on any part of the North American continent."

President Polk's First Annual Message, 1845.

Mr. J. Q. Adams, narrating, in his journal of December 6, 1845 (12 J. Q. Adams's Mem., 218), a conversation with Mr. Bancroft, then in Mr. Polk's Cabinet, thus speaks: "I said I approved entirely of Mr. Polk's repeated assertion of the principle first announced by President James Monroe, in a message to Congress, that the continents of North and South America were no longer to be considered as scenes for future European colonization. He said he had heard that this part of the message of Mr. Monroe had been inserted by him at my suggestion. I told him that was true; that I had been authorized by him to assert the principle in a letter of instruction to Mr. Rush, then minister in England, and had written the paragraph in the very words inserted by Mr. Monroe in his message."

Mr. Calhoun's exposition of the "Monroe doctrine," as contained in the annual message of President Monroe in 1823, when Mr. Calhoun was Secretary of War, is given in a speech delivered by him in the Senate on May 15, 1848, on a bill to enable the President to take temporary military occupation of Yucatan. Mr. Calhoun, speaking of the position taken by Mr. Monroe "that the United States would regard any attempt on the part of the allied powers to extend their system to this country as dangerous to our peace and safety," thus states the circumstances under which Mr. Monroe made this declaration: "The allied powers were the four great continental monarchies—Russia, Prussia, Austria, and France. Shortly after the overthrow of Bonaparte these powers entered into an alliance called the 'Holy Alliance,' the object of which was to sustain and extend monarchical principles as far as possible, and to oppress and put down popular institutions. Eng-

land, in the early stages of the alliance, favored it. The members of the alliance held several congresses, attended either by themselves or their ambassadors, and undertook to regulate the affairs of all Europe, and actually interfered in the affairs of Spain for the purpose of putting down popular doctrines. In its progress, the alliance turned its eyes to this continent in order to aid Spain in regaining her sovereignty over her revolted provinces. At this stage England became alarmed. Mr. Canning was then prime minister. He informed Mr. Rush of the project, and gave him, at the same time, the assurance that, if sustained by the United States, Great Britain would resist. Mr. Rush immediately communicated this to our Government. It was received here with joy; for so great was the power of the alliance that even we did not feel ourselves safe from its interpositions. * * * I remember the reception of the dispatch from Mr. Rush as distinctly as if all the circumstances had occurred yesterday. I well recollect the satisfaction with which it was received by the Cabinet. It came late in the year, not long before the meeting of Congress. As was usual with Mr. Monroe upon great occasions, the papers were sent round to each member of the Cabinet, so that each might be duly apprised of all the circumstances and be prepared to give his opinion. The Cabinet met. It deliberated. There was long and careful consultation, and the result was the declaration which I have just announced. All this has passed away. That very movement on the part of England, sustained by this declaration, gave a blow to the celebrated alliance from which it never recovered. From that time it gradually decayed till it utterly perished. The late revolutions in Europe have put an end to all its work, and nothing remains of all that it ever did." This declaration, Mr. Calhoun proceeded to state, must be limited by the conditions under which it was spoken, as otherwise "it would have involved the absurdity of asserting that the attempt of any European state to extend its system of Government to this continent, the smallest as well as the greatest, would endanger the peace and safety of our country." "The next declaration," Mr. Calhoun proceeded to say, "was that we would regard the interposition of any European power to oppress the Governments of this continent, which we had recently recognized as independent, or to control their destiny in any manner whatever, as manifesting an unfriendly disposition toward the United States. This declaration, also, belongs to the history of that day. It grew out of the same state of circumstances, and may be considered as an appendage to the declaration to which I have just alluded. By the Governments on this continent which we had recognized, were meant the Republics which had grown up after having thrown off the yoke of Spain. They had just emerged from their protracted revolutionary struggles. They had hardly yet reached a point of solidity, and in that tender stage the administration of Mr. Monroe thought it proper not only to make that general declaration in reference to the Holy Alliance, but to make a more specific one against the interference of any European power, in order to countenance and encourage these young Republics as far as we could with propriety." Mr. Calhoun then proceeded to say that the third proposition of Mr. Monroe, which had been referred to, was "that the continents of America, by the free and independent condition which they have assumed and maintained, are not henceforth to be considered as subjects of colonization by any European power." * * * "The word 'colonization' has a specific meaning. It means the establishment of a settlement by emigrants from the parent country in a territory either uninhabited or from which the in-

nabitants have been partially or wholly expelled." * * * "It may be proper to go into a history, also, of this declaration of Mr. Monroe. It grew out of circumstances altogether different from the other two. At that time there was a question between Great Britain and the United States on one side and Russia on the other. All three claimed settlements on the northwest portion of this continent. Great Britain and ourselves having common interest in keeping Russia as far north as possible, the former power applied to the United States for co-operation; and it was in reference to that matter that the additional declaration was made. (But see *infra*, § 159.) It was said to be a proper opportunity to make it. It had reference specially to the subject of the northwest settlement, and the other portions of the continent were drawn in, because all the rest of it, with the exception of some settlements in Surinam, Maracaibo, and thereabout, had passed into independent hands." Mr. Calhoun then proceeded to reply to the statement made in the Senate in debate, that all those declarations had originated with Mr. Adams, and were unknown to the other members of the Cabinet until they appeared in Mr. Monroe's message. "I recollect," said Mr. Calhoun, "as distinctly as I do any event of my life, that all the papers in connection with this subject were submitted to the members before the Cabinet met, and were duly considered. Mr. Adams, then, in speaking of the whole as one, must have reference to the declaration relative to colonization. As respects this, his memory does not differ from mine. My impression is that it never became a subject of deliberation in the Cabinet. I so stated when the Oregon question was before the Senate. I stated it in order that Mr. Adams might have an opportunity of denying it, or asserting the real state of the facts. He remained silent, and I presume my statement is correct, that this declaration was inserted after the Cabinet deliberated. It originated entirely with Mr. Adams, without being submitted to the Cabinet, and it is, in my opinion, owing to this fact that it is not made with the precision and clearness with which the two former are. It declares, without qualification, that these continents have asserted and maintained their freedom and independence, and are no longer subject to colonization by any European power. This is not strictly accurate. Taken as a whole, these continents had not asserted and maintained their freedom and independence. At that period Great Britain had a larger portion of the continent in her possession than the United States. Russia had a considerable portion of it, and other powers possessed some portions on the southern parts of this continent. The declaration was broader than the fact, and exhibits precipitancy and want of due reflection. Besides, there was an impropriety in it when viewed in conjunction with the foregoing declarations. I speak not in the language of censure. We were, as to them, acting in concert with England, on a proposition coming from herself—a proposition of the utmost magnitude and which we felt at the time to be essentially connected with our peace and safety; and of course it was due to propriety as well as policy that this declaration should be strictly in accordance with British feeling. Our power then was not what it is now, and we had to rely upon her co-operation to sustain the ground we had taken. We had then only about six or seven millions of people, scattered, and without such means of communication as we now possess to bring us together in a short period of time. The declaration, accordingly, with respect to colonization, striking at England as well as Russia, gave offense to her, and that to such an extent that she refused to co-operate with us in settling the Russian question. Now, I will venture to say

that if that declaration had come before that cautious Cabinet, for Mr. Monroe was among the wisest and most cautious men I have ever known, it would have been modified and expressed with a far greater degree of precision, and with much more delicacy in reference to the feelings of the British Government.

"In stating the precise character of these declarations, and the manner in which they originated, I have discharged a double duty, a duty to my country, to whom it is important that these declarations should be correctly understood, a duty to the Cabinet of which I was a member and am now the only survivor. I remove a false interpretation, which makes safe and proper declarations improper and dangerous.

"But it is not only in these respects that these famous declarations are misunderstood by the Chief Magistrate of the country as well as by others. They were but declarations—nothing more; declarations announcing in a friendly manner to the powers of the world that we should regard certain acts of interposition of the allied powers as dangerous to our peace and safety; interposition of European powers to oppress the Republics which had just arisen upon this continent, as manifesting an unfriendly disposition, and that this continent, having become free and independent, was no longer the subject of colonization by European powers. Not one word in any one of them in reference to resistance. There is nothing said of it, and with great propriety was it omitted. Resistance belonged to us—to Congress. It is for us to say whether we shall resist or not, and to what extent. * * *

"Whether you will resist or not, and the measure of your resistance—whether it shall be by negotiation, remonstrance, or some intermediate measure, or by a resort to arms—all this must be determined and decided on the merits of the question itself. This is the only wise course. We are not to have quoted on us, on every occasion, general declarations to which any and every meaning may be attached. There are cases of interposition where I would resort to the hazard of war with all its calamities. Am I asked for one? I will answer. I designate the case of Cuba. So long as Cuba remains in the hands of Spain, a friendly power, a power of which we have no dread, it should continue to be, as it has been, the policy of all administrations ever since I have been connected with the Government, to let Cuba remain there; but with the fixed determination, which I hope never will be relinquished, that if Cuba pass from her it shall not be into any other hands but ours. This, not from a feeling of ambition, not from a desire for the extension of dominion, but because that island is indispensable to the safety of the United States, or rather because it is indispensable to the safety of the United States that this island should not be in certain hands. If it were, our coasting trade between the Gulf and the Atlantic would, in case of war, be cut in twain, to be followed by convulsive effects. In the same category I will refer to a case in which we might most rightfully have resisted, had it been necessary, a foreign power; and that is the case of Texas."

4 Calhoun's Works, 455 *ff.*

"President Polk having, in 1848, based on what was supposed to be the Monroe doctrine, a recommendation to take possession of Yucatan, in order to prevent its becoming a colony of any European power, Mr. Calhoun, who was a member of the Monroe Cabinet, explained the circumstances connected with that declaration. It was made in concert with Great Britain, in order to prevent the intervention of the 'Holy

Alliance,' in aiding Spain to regain her sovereignty over her revolted provinces. Mr. Canning had informed Mr. Rush (minister of the United States at London) of the project, assuring him, at the same time, that, if sustained by the United States, Great Britain would resist. (Speech in U. S. Senate, May 15, 1848; Calhoun's Works, vol. iv, p. 454.) This is in accordance with the statement of Sir James Mackintosh, in his speech of June, 1824. (Works, p. 555.) The message itself would seem, however, to have a more extended application. It was with reference to the discussions then pending with Russia, as to the northwest coast of America, that it is said: 'The occasion has been judged proper for asserting, as a principle in which the rights and interests of the United States are involved, that the American continents, by the free and independent condition which they have assumed and maintain, are henceforth not to be considered as subjects for future colonization by any European power. (Annual Register, 1823, p. 185.)"

Lawrence's Wheaton, ed. 1863, p. 124.

"While it is not my purpose to recommend the adoption of any measure with a view to the acquisition of the 'dominion and sovereignty' over Yucatan, yet, according to our established policy, we could not consent to a transfer of this 'dominion and sovereignty' to either Spain, Great Britain, or any other European power. In the language of President Monroe, in his message of December, 1823, 'we should consider any attempt on their part to extend their system to any portion of this hemisphere as dangerous to our peace and safety.' In my annual message of December, 1845, I declared that near a quarter of a century ago the principle was distinctly announced to the world, in the annual message of one of my predecessors, that the American continents, by the free and independent condition which they have assumed and maintain, are henceforth not to be considered as subjects for future colonization by any European power.' This principle will apply with greatly increased force, should any European power attempt to establish any new colony in North America. In the existing circumstances of the world, the present is deemed a proper occasion to reiterate and reaffirm the principle avowed by Mr. Monroe, and to state my cordial concurrence in its wisdom and sound policy."

President Polk's Special Message, April 29, 1848.

"The independence as well as the interests of the nations on this continent require that they should maintain an American system of policy entirely distinct from that which prevails in Europe. To suffer any interference on the part of the European Governments with the domestic concerns of the American Republics, and to permit them to establish new colonies upon this continent, would be to jeopard their independence and ruin their interests. These truths ought everywhere throughout this continent to be impressed upon the public mind; but what can the United States do to resist such European interference whilst the Spanish-American Republics continue to weaken themselves

by divisions and civil war, and deprive themselves of doing anything for their own protection?"

Mr. Buchanan, Sec. of State, to Mr. Hise, June 3, 1848; MSS. Inst. Am. St.; 1 Curtis' Buchanan, 623.

The United States "will not consent to the subjugation of any of the independent states of this continent to European powers, nor to the exercise of a protectorate over them, nor to any other direct political influences to control their policy or institutions."

Mr. Cass, Sec. of State, to Mr. Dodge, Oct. 21, 1858; same to same, Dec. 2, 1858; MSS. Inst., Spain.

The United States will decline to enter with European powers into a joint mediation between contending armed parties in Mexico.

Mr. Trescot, Acting Sec. of State, to Mr. Elgee, Aug. 6, 1860; MSS. Inst., Mex. Mr. Cass, Sec. of State, to Mr. McLane, Sept. 20, 1860; *infra*, § 102.

The Clayton-Bulwer treaty is the only exception to the rule that the Government of the United States will decline to enter into any combinations or alliances with European powers for the settlement of questions connected with the United States.

Supra, § 40; *infra*, §§ 150, 287 *ff*.

See Tucker's Monroe Doctrine, 43.

As to British claim, after this treaty, to Honduras, see *infra*, §§ 150, 287, *ff*.

The Clarendon-Dallas treaty of 1856, which was negotiated with the view of settling the difficulty, was amended by the Senate so as to be unsatisfactory to the British Government, and consequently was dropped. See *infra*, § 150.

The Government of the United States would regard with grave concern and dissatisfaction movements in Cuba to introduce Spanish authority within the territory of Dominica.

Mr. Seward, Sec. of State, to Mr. Tassara, April 2, 1861; MSS. Notes, Spain.

"The correspondence which took place between this Government and that of Her Majesty at an early stage of the insurrection shows that the United States deemed the formation of a mutual engagement by Great Britain and France that those two powers would act in concert with regard to the said insurrection to be an unfriendly proceeding, and that the United States, therefore, declined to receive from either of those powers any communication which avowed the existence of such an arrangement. I have, therefore, now to regret that Earl Russell has thought it necessary to inform this Government that Her Majesty's Government have found it expedient to consult with the Government of France upon the question whether Her Majesty's Government will now recognize the restoration of peace in the United States.

"It is further a source of regret that Her Majesty's Government avow that they will continue still to require that any United States cruisers which shall hereafter be lying within a British port or harbor or waters shall be detained twenty-four hours, so as to afford an opportunity for

any insurgent vessel then actually being within said port, harbor, or waters to gain the advantage of the same time for her departure from the same port, harbor, or waters."

Mr. Seward, Sec. of State, to Mr. Bruce, June 19, 1865; MSS. Notes, Gr. Brit.

The Government of the United States will "maintain and insist with all the decision and energy which are compatible with our existing neutrality that the republican system which is accepted by any one of those (South American) states shall not be wantonly assailed, and that it shall not be subverted as an end of a lawful war by European powers;" but beyond this position the United States Government will not go, nor will it consider itself hereby bound to take part in wars in which a South American Republic may enter with a European sovereign when the object of the latter is not the establishment in place of a subverted Republic of a Monarchy under a European prince.

Mr. Seward, Sec. of State, to Mr. Kilpatrick, June 2, 1866; MSS. Inst., Chili.

"The avoidance of entangling alliances, the characteristic feature of the foreign policy of Washington, sprang from this condition of things. But the entangling alliances which then existed were engagements made with France as a part of the general contract under which aid was furnished to us for the achievement of our independence. France was willing to waive the letter of the obligation as to her West India possessions, but demanded, in its stead, privileges in our ports which the Administration was unwilling to concede. To make its refusal acceptable to a public which sympathized with France, the Cabinet of General Washington exaggerated the principle into a theory tending to national isolation.

"The public measures designed to maintain unimpaired the domestic sovereignty and the international neutrality of the United States were independent of this policy, though apparently incidental to it. The municipal laws enacted by Congress then and since have been but declarations of the law of nations. They are essential to the preservation of our national dignity and honor; they have for their object to repress and punish all enterprises of private war, one of the last relics of mediæval barbarism; and they have descended to us from the fathers of the Republic, supported and enforced by every succeeding President of the United States.

"The foreign policy of these early days was not a narrow one. During this period we secured the evacuation by Great Britain of the country wrongfully occupied by her on the lake; we acquired Louisiana; we measured forces on the sea with France, and on the land and sea with England; we set the example of resisting and chastising the piracies of the Barbary States; we initiated in negotiations with Prussia the long line of treaties for the liberalization of war and the promotion of international intercourse; and we steadily demanded, and at length obtained,

indemnification from various Governments for the losses we had suffered by foreign spoliations in the wars of Europe.

"To this point in our foreign policy we had arrived when the revolutionary movements in Spanish and Portuguese America compelled a modification of our relations with Europe, in consequence of the rise of new and independent states in America.

"The revolution, which commenced in 1810 and extended through all the Spanish-American continental colonies, after vain efforts of repression on the part of Spain, protracted through twenty years, terminated in the establishment of the independent states of Mexico, Guatemala, San Salvador, Honduras, Nicaragua, Costa Rica, Venezuela, Colombia, Ecuador, Peru, Chili, Bolivia, the Argentine Republic, Uruguay, and Paraguay, to which the Empire of Brazil came in time to be added. These events necessarily enlarged the sphere of action of the United States, and essentially modified our relations with Europe and our attitude to the rest of this continent.

"The new states were, like ourselves, revolted colonies. They continued the precedent we had set, of separating from Europe. Their assumption of independence was stimulated by our example. They professedly imitated us, and copied our national Constitution, sometimes even to their inconvenience.

"The Spanish-American colonies had not the same preparation for independence that we had. Each of the British colonies possessed complete local autonomy. Its formal transition from dependence to independence consisted chiefly in expelling the British governor of the colony and electing a governor of the State, from which to the organized Union was but a step. All these conditions of success were wanting in Spanish America, and hence many of the difficulties in their career as independent states; and further, while the revolution in British America was the exclusive result of the march of opinion in the British colonies, the simultaneous action of the separate Spanish colonies, though showing a desire for independence, was principally produced by the accident of the invasion of Spain by France.

"The formation of these new sovereignties in America was important to us, not only because of the cessation of colonial monopolies to that extent, but because of the geographical relations to us held by so many new nations, all, like ourselves, created from European stock, and interested in excluding European politics, dynastic questions, and balances of power from further influence in the New World.

"Thus the United States were forced into new lines of action, which though apparently in some respects conflicting, were really in harmony with the line marked out by Washington. The avoidance of entangling political alliances and the maintenance of our own independent neutrality became doubly important from the fact that they became applicable to the new Republics as well as to the mother country. The duty of non-interference had been admitted by every President. The question came

up in the time of the first Adams, on the occasion of the enlistment projects of Miranda. It appeared again under Jefferson (anterior to the revolt of the Spanish colonies) in the schemes of Aaron Burr. It was an ever-present question in the administrations of Madison, Monroe, and the younger Adams, in reference to the questions of foreign enlistment or equipment in the United States, and when these new Republics entered the family of nations, many of them very feeble, and all too much subject to internal revolution and civil war, a strict adherence to our previous policy and a strict enforcement of our laws became essential to the preservation of friendly relations with them; for, since that time, it has been one of the principal cares of those intrusted with the administration of the Government to prevent piratical expeditions against these sister Republics from leaving our ports. And thus the changed condition of the New World made no change in the traditional and peaceful policy of the United States in this respect.

"In one respect, however, the advent of these new states in America did compel an apparent change of foreign policy on our part. It devolved upon us the determination of the great international question, at what time and under what circumstances to recognize a new power as entitled to a place among the family of nations. There was but little of precedent to guide us, except our own case. Something, indeed, could be inferred from the historical origin of the Netherlands and Switzerland, but our own case, carefully and conscientiously considered, was sufficient to guide us to right conclusions. We maintained our position of international friendship and of treaty obligations toward Spain, but we did not consider that we were bound to wait for its recognition of the new Republics before admitting them into treaty relations with us as sovereign states. We held that it was for us to judge whether or not they had attained to the condition of actual independence, and the consequent right of recognition by us. We considered this question of fact deliberately and coolly. We sent commissioners to Spanish America to ascertain and report for our information concerning their actual circumstances, and in the fullness of time we acknowledged their independence. We exchanged diplomatic ministers, and made treaties of amity with them, the earliest of which, negotiated by Mr. John Quincy Adams, served as the model for the subsequent treaties with the Spanish-American Republics. We also, simultaneously therewith, exerted our good offices with Spain to induce her to submit to the inevitable result, and herself to accept and acknowledge the independence of her late colonies. We endeavored to induce Russia to join us in these representations. In all this our action was positive in the direction of promoting the complete political separation of America from Europe.

"A vast field was thus opened to the statesmen of the United States for the peaceful introduction, the spread, and the permanent establishment of the American ideas of republican government, of modification

of the laws of war, of liberalization of commerce, of religious freedom and toleration, and of the emancipation of the New World from the dynastic and balance-of-power controversies of Europe.

"Mr. John Quincy Adams, beyond any other statesman of the time in this country, had the knowledge and experience, both European and American, the comprehension of thought and purpose, and the moral convictions which peculiarly fitted him to introduce our country into this new field, and to lay the foundation of an American policy. The declaration known as the Monroe doctrine, and the objects and purposes of the congress of Panama, both supposed to have been largely inspired by Mr. Adams, have influenced public events from that day to this as a principle of government for this continent and its adjacent islands.

"It was at the period of the congress of Aix-la-Chapelle and of Laybach, when the 'Holy Alliance' was combined to arrest all political changes in Europe in the sense of liberty, when they were intervening in Southern Europe for the re-establishment of absolutism, and when they were meditating interference to check the progress of free government in America, that Mr. Monroe, in his annual message of December 1823, declared that the United States would consider any attempt to extend the European system to any portion of this hemisphere as dangerous to our peace and safety. 'With the existing colonies or dependencies of any European power,' he said, 'we have not interfered and shall not interfere. But with the Governments who have declared their independence and maintained it, and whose independence we have on great consideration and on just principles acknowledged, we could not view any interposition for the purpose of oppressing them, or controlling, in any other manner, their destiny, by any European power, in any other light than as the manifestation of an unfriendly feeling towards the United States.'

"This declaration resolved the solution of the immediate question of the independence of the Spanish-American colonies, and is supposed to have exercised some influence upon the course of the British cabinet in regard to the absolutist schemes in Europe as well as in America.

"It has also exercised a permanent influence on this continent. It was at once invoked in consequence of the supposed peril of Cuba on the side of Europe; it was applied to a similar danger threatening Yucatan; it was embodied in the treaty of the United States and Great Britain as to Central America; it produced the successful opposition of the United States to the attempt of Great Britain to exercise dominion in Nicaragua under the cover of the Mosquito Indians; and it operated in like manner to prevent the establishment of a European dynasty in Mexico.

"The United States stand solemnly committed by repeated declarations and repeated acts to this doctrine, and its application to the affairs of this continent. In his message to the two houses of Congress at the

commencement of the present session, the President, following the teachings of all our history, said that the existing 'dependencies are no longer regarded as subject to transfer from one European power to another. When the present relation of colonies ceases, they are to become independent powers, exercising the right of choice and of self-control in the determination of their future condition and relations with other powers.'

"This policy is not a policy of aggression; but it opposes the creation of European dominion on American soil, or its transfer to other European powers, and it looks hopefully to the time, when, by the voluntary departure of European Governments from this continent and the adjacent islands, America shall be wholly American.

"It does not contemplate forcible intervention in any legitimate contest; but it protests against permitting such a contest to result in the increase of European power or influence; and it ever impels this Government, as in the late contest between the South American Republics and Spain, to interpose its good offices to secure an honorable peace.

"The congress of Panama was planned by Bolivar to secure the union of Spanish America against Spain. It had originally military as well as political purposes. In the military objects the United States could take no part; and indeed the necessity for such objects ceased when the full effects of Mr. Monroe's declarations were felt. But the pacific objects of the congress, the establishment of close and cordial relations of amity, the creation of commercial intercourse, of interchange of political thought, and of habits of good understanding, between the new Republics and the United States and their respective citizens, might perhaps have been attained had the administration of that day received the united support of the country. Unhappily they were lost; the new states were removed from the sympathetic and protecting influence of our example, and their commerce, which we might then have secured, passed into other hands, unfriendly to the United States.

"In looking back upon the Panama congress from this length of time, it is easy to understand why the earnest and patriotic men who endeavored to crystallize an American system for this continent failed.

"Mr. Clay and Mr. Adams were far-sighted statesmen, but unfortunately they struck against the rock of African slavery. One of the questions proposed for discussion in the conference was 'the consideration of the means to be adopted for the entire abolition of the African slave trade,' to which proposition the committee of the United States Senate of that day replied, 'The United States have not certainly the right, and ought never to feel the inclination, to dictate to others who may differ with them upon this subject, nor do the committee see the expediency of insulting other states, with whom we are maintaining relations of perfect amity, by ascending the moral chair, and proclaiming from thence mere abstract principles, of the rectitude of which each nation enjoys the perfect right of deciding for itself.' The same com-

mittee also alluded to the possibility that the condition of the islands of Cuba and Porto Rico, still the possessions of Spain, and still slave holding, might be made the subject of discussion and of contemplated action by the Panama congress. 'If ever the United States [they said] permit themselves to be associated with these nations in any general congress assembled for the discussion of common plans in any way affecting European interests, they will, by such act, not only deprive themselves of the ability they now possess of rendering useful assistance to the other American states, but also produce other effects prejudicial to their own interests.

"Thus the necessity at that day of preserving the great interests of the Southern States in African slavery, and of preventing a change in the character of labor in the islands of Cuba and Porto Rico, lost to the United States the opportunity of giving a permanent direction to the political and commercial connections of the newly enfranchised Spanish American states, and their trade passed into hands unfriendly to the United States, and has remained there ever since.

"Events, subsequent to that date, have tended to place us in a position to retrieve our mistakes; among which events may be particularly named the suppression of the rebellion, the manifestation of our undeveloped and unexpected military power, the retirement of the French from Mexico, and the abolition of slavery in the United States.

"There is good reason to believe that the latter fact has had an important influence in our favor in Spanish America. It has caused us to be regarded there with more sympathetic as well as more respectful consideration. It has relieved those Republics from the fear of filibusterism which had been formerly incited against Central America and Mexico in the interest of slave extension; and it has produced an impression of the stability of our institutions and of our public strength sufficient to dissipate the fears of our friends or the hopes of those who wish us ill.

"Thus there exists in the Spanish-American Republics confidence toward the United States. On our side they find a feeling of cordial amity and friendship, and a desire to cultivate and develop our common interests on this continent. With some of these states our relations are more intimate than with others, either by reason of closer similarity of constitutional forms, of greater commercial intercourse, of proximity in fact, or of the construction or contemplated construction of lines of transit for our trade and commerce between the Atlantic and the Pacific. With several of them we have peculiar treaty relations. The treaty of 1846 between the United States and New Granada contains stipulations of guarantee for the neutralitee of that part of the Isthmus within the present territory of Colombia, and for the protection of the rights of sovereignty and property therein belonging to Colombia. Similar stipulations appear in the treaty of 1867 with Nicaragua, and of July, 1864, with Honduras. Those treaties (like the treaty of alliance made with

France in 1778 by Dr. Franklin, Silas Deane, and Arthur Lee) constitute *pro tanto* a true protective alliance between the United States and each of those Republics. Provisions of like effect appear in the treaty of April 19, 1850, between Great Britain and the United States."

Report of Mr. Fish, Sec. of State, to the President, July 14, 1870, accompanying President's Message of same date.

"The allied and other republics of Spanish origin, on this continent, may see in this fact a new proof of our sincere interest in their welfare; of our desire to see them blessed with good governments, capable of maintaining order and of preserving their respective territorial integrity, and of our sincere wish to extend our own commercial and social relations with them. The time is not probably far distant when, in the natural course of events, the European political connection with this continent will cease. Our policy should be shaped, in view of this probability, so as to ally the commercial interests of the Spanish American States more closely to our own, and thus give the United States all the pre-eminence and all the advantage which Mr. Monroe, Mr. Adams, and Mr. Clay contemplated when they proposed to join in the congress of Panama."

President Grant's Second Annual Message, 1870.

On the ground that "the decision of American questions pertains to America itself," the Department of State will not sanction an arbitration by European states of South American difficulties, even with the consent of the parties.

Mr. Frelinghuysen, Sec. of State, to Mr. Reed, Jan. 4, 1883; MSS. Inst., Spain.

The Government of the United States would regard with grave anxiety an attempt on the part of France to force by hostile pressure the payment by Venezuela of her debt to French citizens.

Mr. Blaine, Sec. of State, to Mr. Noyes, July 23, 1881; MSS. Inst., France. See Mr. Blaine to Mr. Morton, Dec. 16, 1881.

It was held in 1881 inexpedient for the United States to unite with France and Great Britain in intervening to terminate hostilities between Chili and Peru.

Mr. Blaine, Sec. of State, to Mr. Morton, Sept. 5, 1881; MSS Inst., France; *see infra*, § 102.

"Mr. Seward, in 1868, when Secretary of State, projected a treaty with the United States of Colombia, and 'was so desirous of securing some satisfactory arrangement with that Government,' so writes Mr. Baker, his biographer (Diplom. Hist. of War, p. 34), 'that he sent Mr. Caleb Cushing, as a special agent, to join our minister at Bogota in the negotiations. A treaty embodying the Monroe doctrine was agreed upon and signed by the ministers.' The treaty was rejected by the Senate of Colombia, and 'for unknown reasons failed to receive the approval of the Senate of the United States.' (Appleton's Cyclop. 1869, pp. 108, 704; Secretary Evarts's report, March 8, 1880; Ex. Doc.

No. 112, Senate, 46th Cong., 2d sess.) Mr. Seward's protest against French interference, in 1863, in Mexican affairs, though sustained in the House of Representatives, was passed over, no doubt with the assent of the Administration, without action in the Senate. And Mr. Seward, in his letter to Montholon, of December 6, 1865, does not place his objections to French interference in Mexico on the ground of the Monroe doctrine, but on the ground that 'the people of every state on the American continent have a right to secure for themselves a republican government if they choose, and that interference by foreign states to prevent the enjoyment of such institutions deliberately established is wrongful, and in its effects antagonistical to the free and popular form of government existing in the United States.' (Diplom. Hist. of the War, 427.) A striking speech on this topic by General Dix will be found in Dix's Life, i, 217, in which he says that the protests of Presidents Monroe and Polk 'are sustained by an undivided public opinion, even though they may not have received a formal response from Congress.' This is true so far as it concerns the abitrary interference of European sovereigns in American affairs, or the attempt of any European power to obtain the control of the Isthmus of Panama. But the doctrine should not be extended so as to preclude a European power from receiving for its own purposes (*e. g.*, for coaling steamers) a cession of territory in South America.

"For an article on the Monroe doctrine in relation to the Isthmian Canal, see North American Review for June, 1880, and see same Review, December, 1881; South. Law Rev., N. S., vi, 729."

Whart. Com. Am. Law, § 175.

President Woolsey, when discussing this topic, thus speaks (§ 47):

"Was it intended by this to preclude the South American Republics, without their will, from receiving such (European) colonies within their borders—of surrendering their territory for that purpose? Such a thing, probably, was not thought of. Mr. Adams, when President, in 1825, thus refers to Mr. Monroe's principle, while speaking in a special message of a congress at Panama. 'An agreement between all the parties represented at the meeting, that each will guard *by its own means* against the establishment of any future European colony within its borders, may be found desirable. This was more than two years since announced by my predecessor to the world, as a principle resulting from the emancipation of both the American continents.' Mr. Adams, when Secretary of State under Mr. Monroe, originated the 'principle,' and must have known what he meant. But the principle, even in this time form, was repudiated by the House of Representatives, in a resolution declaring that the United States 'ought not to become parties with any of the South American Republics' to any joint declaration for the purpose of preventing the interference of any of the European powers with their independence or form of government; or to any compact for the purpose of preventing colonization upon the continent of America.'

"On the whole, then (1), the doctrine is not a national one. The House of Representatives, indeed, had no right to settle questions of policy or of international law. But the Cabinet has as little. The opinion of one part of the Government neutralized that of another. (2) The principle first mentioned of resisting attempts to overthrow the liberties of the Spanish Republics, was one of most righteous self-defense, and of vital importance. And such it will probably al-

ways be regarded, if a similar juncture should arise. But the other principle of prohibiting European colonization was vague, and if intended to prevent Russia from stretching her borders on the Pacific farther to the south, went far beyond any limit of interference that has hitherto been set up. What right had the United States to control Russia in gaining territory on the Pacific, or planting colonies there, when she had neither territory nor colony to be endangered, within thousands of miles?

"The Monroe doctrine came up again in another shape in 1848. President Polk having announced that the Government of Yucatan had offered the dominion over that country to Great Britain, Spain, and the United States, urges on Congress such measures as may prevent it from becoming a colony and a part of the dominions of any European power, which would be, he says, in contravention of the declaration of Mr. Monroe, and which must by no means be allowed. Mr. Calhoun, in his speech on this subject, shows that the case is very different from that contemplated by Mr. Monroe, that the declarations of the latter could not be regarded as expressing the settled policy of this country, and that they were mere declarations without threat of resistance. The 'colonization' contemplated by the Monroe doctrine could not apply to Yucatan, and the possibility of England (which was especially intended) acquiring power there was remote. The principle, he adds, 'which lies at the bottom of the (President's) recommendation is, that when any power on this continent becomes involved in internal warfare, and the weaker side chooses to make application to us for support, we are bound to give them support, for fear the offer of the sovereignty of the country may be made to some other power and accepted. It goes infinitely and dangerously beyond Mr. Monroe's declaration. It puts it in the power of other countries on this continent to make us a party to all their wars.'

"To lay down the principle that the acquisition of territory on this continent, by any European power, cannot be allowed by the United States, would go far beyond any measures dictated by the system of the balance of power, for the rule of self-preservation is not applicable in our case; we fear no neighbors. To lay down the principle that no political systems unlike our own, no change from republican forms to those of monarchy, can be endured in the Americas, would be a step in advance of the Congresses at Laybach and Verona, for they apprehended destruction to their political fabrics, and we do not. But to resist attempts of European powers to alter the constitutions of states on this side of the water, is a wise and just opposition to interference. Anything beyond this justifies the system which absolute Governments have initiated for the suppression of revolutions by main force."

After Mr. Monroe's declaration in his message above referred to, the "proposed intervention in South America by the allied sovereigns having been thus opposed by the United States as well as by Great Britain, was not further pressed; and, under such circumstances, a resolution offered in the House of Representatives, protesting against such intervention, was withdrawn. Mr. Monroe, in his message, declared, in addition, 'that the American continents, by the free and independent conditions which they have assumed and maintained, are henceforth not to be considered as subjects for future colonization by any European power.' Mr. J. Q. Adams was then Secretary of State, and was responsible for this portion of the message. In 1825, when President, he addressed a special message to Congress in reference to the Panama congress, in

which he states that 'an agreement between all the parties represented at the meeting, that each will guard by its own means against the establishment of any future European colony within its borders, may be found desirable.' And he then gave the following significant exposition of Mr. Monroe's declaration: 'This was more than two years since announced by my predecessor to the world as a principle resulting from the emancipation of both the American continents.' The House of Representatives was at the time, however, in strong opposition to Mr. Adams's administration, and was peculiarly indisposed to unite in approving of so distinctively administration a measure as the congress of Panama. With this was mingled a growing distrust in the permanency of the Governments of the various South American Republics with which it was proposed to combine. But whatever may have been the motives, the House expressed an emphatic disapproval of the Administration project. The United States, so it was resolved by a party majority, 'ought not to become parties' with the South American Governments 'to any joint declaration for the purpose of preventing the interference of any of the European powers with their independence or form of government; or to any compact for the purpose of preventing colonization upon the continent of America.' In 1848 the question was again brought up by Mr. Polk, then President, who in a message to Congress stated that the Government of Yucatan had offered the protectorship of that country successively to Great Britain, the United States, and Spain, and called on Congress to take measures to prevent any part of the American continent from being subjected to the control of any European power. The Yucatan movement towards a protectorship, however, was so ephemeral that no Congressional action towards its prevention was necessary, and it became also plain that Congress as a body was not disposed to pass any measure tending to affirm the position taken by Mr. Polk."

See Whart. Com. Am. Law, § 175. The Yucatan question has been already discussed in this section.

President Adams's message, of 1825, with regard to the congress at Panama, and the papers connected therewith, will be found in the British and Foreign State Papers for 1825–'6, vol. 13; same work, vol. 15, § 32.

As to Ostend Conference, see Mr. Marcy, Sec. of State, to Mr. Soulé, Aug. 16, 1854; Nov. 13, 1854, MSS. Inst., Spain; and see 2 Curtis' Buchanan, 136.

As to Mr. Polk's reassertion of the Monroe doctrine, with special reference to North America, see 1 Curtis' Buchanan, 619 *ff.*

For a discussion of the Monroe doctrine, see 1 Phillimore Int. Law (3 ed.), 590; and also review by Mr. Trescot, 9 South. Quar. Rev., N. S., Ap., 1854, 429. See also disquisition by Mr. Urquhart, 13 Free Press, lib. Dep. of State.

Mr. W. B. Lawrence, in his Com. sur Droit Int. I, 312, argues that Mr Monroe's doctrine as to foreign interposition in America is substantially the same as that advanced by the French Government against the Prussian movement in 1830 to interfere in the affairs of Belgium. (See same volume, 301 *ff.*, for full discussion of Monroe doctrine.)

As to duties of U. S. to the West Indies, see App., Vol. III, § 61.

The objections to joint action with other powers as to affairs on this continent are stated by Mr. Everett in notes to Count de Sartiges and Lord John Russell, given *infra*, § 72. These notes are to be particularly studied, as they give views adopted by Mr. Everett after consultation with Mr. Webster, and subsequently accepted by Mr. Marcy and Mr. Cass, succeeding Secretaries of State, as well as by Mr. Calhoun in the Senate.

IV. *SPECIAL APPLICATION.*

(1) MEXICO.

§ 58.

The message of President Jackson on Feb. 7, 1837, on Mexican Relations, and the accompanying papers, will be found in Senate Doc. No. 160, 24th Cong., 2d sess. Mr. Buchanan's report of Feb. 19, 1837, on the same, is in Senate Doc. 189, same sess. (See also documents connected with President Jackson's message of Dec. 6, 1836, House Ex. Doc. No. 2; 24th Cong., 2d sess.; mess. of Jan. 26, 1837, House Ex. Doc. No. 105, same sess.; message of Feb. 8, 1837, House Ex. Doc. No. 139, same sess.; Mr. Howard's report on same, Feb. 24, 1837, House Rep., No. 281, same sess.; report of Secretary of State, Dec. 2, 1837, attached to Prest. Van Buren's message at commencement of 25th Cong., 2d sess., Dec. 5, 1837, House Ex. Doc. No. 3.)

For a history of our early diplomatic relations with Mexico, see Mr. Van Buren, Sec. of State, to Mr. Butler, Oct. 16, 1829; MSS. Inst., Am. St.

President Van Buren's message of April 27, 1838, giving correspondence between the United States and Mexico, is contained in House Ex. Doc. No. 351, 25th Cong., 2d sess.

Papers connected with the organization of Texas will be found in the British and Foreign State Papers for 1835–'6, vol. 24, 1267, and in same work for 1842–'3, vol. 31, 801.

The correspondence between the United States and Mexico respecting Texas, will be found in the British and Foreign State Papers, 1836–'7, vol. 25, 1075, 1132. In the same volume, 1392, will be found correspondence with Texas as to annexation.

The correspondence, in 1824–1836, relative to boundaries, and to cession of part of Texas, will be found in British and Foreign State Papers for 1837–'8, vol. 26, 828, 1379. Among these documents are instructions by Mr. Clay (Sec.) to Mr. Poinsett (Mexico), March 15, 1827, offering to purchase Texas; Mr. Van Buren (Sec.) to Mr. Poinsett, Aug. 25, 1829, to the same effect, together with a series of documents respecting the settlement of boundary between Mexico and the United States. The correspondence in 1836 between the United States and Mexico in respect to claims by the former on the latter is also given in detail, 1379–1427.

The correspondence in 1836 between the Department of State and the Mexican mission will be found attached to the President's message of December 6, 1836, at the commencement of the 2d session 24th Congress.

For suggestions to Mexico to acquiesce in independence of Texas, see Mr. Webster, Sec. of State, to Mr. Thompson, June 22, 1842; MSS. Inst., Mex. For elaborate vindication of United States neutrality between Texas and Mexico, see same to same, July 8, 1842, July 13, 1842.

As to history and policy of annexation of Texas, see *infra*, § 69, 70, 72.

No matter how strongly the sympathies of the United States may be with the liberal constitutional party in Mexico, "our Government cannot properly intervene in its behalf without violating a cardinal feature of our foreign policy."

Mr. Cass, Sec. of State, to Mr. McLane, March 7, 1859; MSS. Inst., Mex.

"While we do not deny the right of any other power to carry on hostile operations against Mexico, for the redress of its grievances, we

firmly object to its holding possession of any part of that country, or endeavoring by force to control its political destiny.

"This opposition to foreign interference is known to France, England, and Spain, as well as the determination of the United States to resist any such attempt by all the means in their power. Any design to act in opposition to this policy has been heretofore disavowed by each of those powers, and recently by the minister of Spain, in the name of his Government, in the most explicit manner. * * *

"I have already referred to the extent of the principle of foreign interference which we maintain with regard to Mexico. It is proper to add that while that principle denies the right of any power to hold permanent possession of any part of that country, or to endeavor by force to direct or control its political destiny, it does not call in question its right to carry on hostile operations against that Republic for the redress of any real grievances it may have suffered. But we insist that such hostilities be fairly prosecuted for that purpose and be not converted into the means of acquisition or of political contract."

Mr. Cass, Sec. of State, to Mr. McLane, Sept. 20, 1860; MSS. Inst., Mex.

"Our relations with Mexico remain in a most unsatisfactory condition. In my last two annual messages I discussed extensively the subject of these relations, and do not now propose to repeat at length the facts and arguments then presented. They proved conclusively that our citizens residing in Mexico, and our merchants trading thereto, had suffered a series of wrongs and outrages such as we have never patiently borne from any other nation. For these our successive ministers, invoking the faith of treaties, had, in the name of their country, persistently demanded redress and indemnification, but without the slightest effect. Indeed, so confident had the Mexican authorities become of our patient endurance, that they universally believed they might commit these outrages upon American citizens with absolute impunity. Thus wrote our minister in 1856, and expressed the opinion, that 'nothing but a manifestation of the power of the Government and of its purpose to punish these wrongs will avail."

"Afterwards, in 1857, came the adoption of a new constitution for Mexico, the election of a President and Congress under its provisions, and the inauguration of the President. Within one short month, however, this President was expelled from the capital by a rebellion in the army; and the supreme power of the Republic was assigned to General Zuloaga. This usurper was, in his turn, soon compelled to retire, and give place to General Miramon.

"Under the constitution which had thus been adopted, Señor Juarez, as chief justice of the supreme court, became the lawful President of the Republic; and it was for the maintenance of the constitution and his authority derived from it, that the civil war commenced, and still continues to be prosecuted.

"Throughout the year 1858, the constitutional party grew stronger and stronger. In the previous history of Mexico, a successful military revolution at the capital had almost universally been the signal for submission throughout the Republic. Not so on the present occasion. A majority of the citizens persistently sustained the constitutional Government. When this was recognized in April, 1859, by the Government of the United States, its authority extended over a large majority of the Mexican States and people, including Vera Cruz, and all the other important seaports of the Republic. From that period our commerce with Mexico began to revive, and the constitutional Government has afforded it all the protection in its power.

"Meanwhile, the Government of Miramon still held sway at the capital and over the surrounding country, and continued its outrages against the few American citizens who still had the courage to remain within its power. To cap the climax, after the battle of Tacubaya, in April, 1859, General Marquez ordered three citizens of the United States, two of them physicians, to be seized in the hospital at that place, taken out and shot, without crime, and without trial. This was done, notwithstanding our unfortunate countrymen were at the moment engaged in the holy cause of affording relief to the soldiers of both parties who had been wounded in the battle, without making any distinction between them.

"The time had arrived, in my opinion, when this Government was bound to exert its power to avenge and redress the wrongs of our citizens, and to afford them protection in Mexico. The interposing obstacle was that the portion of the country under the sway of Miramon could not be reached without passing over territory under the jurisdiction of the constitutional Government. Under these circumstances, I deemed it my duty to recommend to Congress, in my last annual message, the employment of a sufficient military force to penetrate into the interior, where the Government of Miramon was to be found, with, or, if need be, without the consent of the Juarez Government, though it was not doubted that this consent could be obtained. Never have I had a clearer conviction on any subject than of the justice, as well as wisdom, of such a policy. No other alternative was left, except the entire abandonment of our fellow-citizens who had gone to Mexico under the faith of treaties to the systematic injustice, cruelty, and oppression of Miramon's Government. Besides, it is almost certain that the simple authority to employ this force would of itself have accomplished all our objects without striking a single blow. The constitutional Government would, then, ere this have been established at the city of Mexico, and would have been ready and willing, to the extent of its ability, to do us justice.

"In addition, and I deem this a most important consideration, European Governments would have been deprived of all pretext to interfere in the territorial and domestic concerns of Mexico. We should thus

have been relieved from the obligation of resisting, even by force, should this become necessary, any attempt by these Governments to deprive our neighboring Republic of portions of her territory, a duty from which we could not shrink without abandoning the traditional and established policy of the American people. I am happy to observe that, firmly relying upon the justice and good faith of these Governments, there is no present danger that such a contingency will happen.

"Having discovered that my recommendations would not be sustained by Congress, the next alternative was to accomplish, in some degree, if possible, the same objects by treaty stipulations with the constitutional Government. Such treaties were accordingly concluded by our late able and excellent minister to Mexico, and on the 4th of January last were submitted to the Senate for ratification. As these have not yet received the final action of that body, it would be improper for me to present a detailed statement of their provisions. Still, I may be permitted to express the opinion in advance, that they are calculated to promote the agricultural, manufacturing, and commercial interests of the country, and to secure our just influence with an adjoining Republic as to whose fortunes and fate we can never feel indifferent; whilst at the same time they provide for the payment of a considerable amount towards the satisfaction of the claims of our injured fellow-citizens."

President Buchanan's Last Annual Message, 1860.

"That Republic (Mexico) has been in a state of constant revolution ever since it achieved its independence from Spain. The various constitutions adopted from time to time had been set at naught almost as soon as proclaimed; and one military leader after another, in rapid succession, had usurped the Government. This fine country, blessed with a benign climate, a fertile soil, and vast mineral resources, was reduced by civil war and brigandage to a condition of almost hopeless anarchy. Meanwhile, our treaties with the Republic were incessantly violated.

"Our citizens were imprisoned, expelled from the country, and in some instances murdered. Their vessels, merchandise, and other property were seized and confiscated. While the central Government at the capital was acting in this manner, such was the general lawlessness prevailing that different parties claiming and exercising local authority in several districts were committing similar outrages on our citizens. Our treaties had become a dead letter, and our commerce with the Republic was almost entirely destroyed. The claims of American citizens filed in the State Department, for which they asked the interposition of their own Government with that of Mexico to obtain redress and indemnity, exceeded $10,000,000. Although this amount may have been exaggerated by the claimants, still their actual losses must have been very large.

"In all these cases, as they occurred, our successive ministers demanded redress, but their demands were only followed by new injuries. Their testimony was uniform and emphatic in reference to the only remedy which in their judgment would prove effectual. 'Nothing but a manifestation of the power of the Government of the United States,'

wrote Mr. John Forsyth, our minister in 1856, 'and of its purpose to punish these wrongs will avail. I assure you that the universal belief here is that there is nothing to be apprehended from the Government of the United States, and that local Mexican officials can commit these outrages upon American citizens with absolute impunity.'

"In the year 1857 a favorable change occurred in the affairs of the Republic, inspiring better hopes for the future. A constituent Congress, elected by the people of the different States for this purpose, had framed and adopted a republican constitution. It adjourned on the 17th of February, 1857, having provided for a popular election to be held in July for a President and members of Congress. At this election General Comonfort was chosen President, almost without opposition. His term of office was to commence on the 1st of December, 1857, and to continue for four years. In case his office should become vacant, the constitution had provided that the chief justice of Mexico, then General Juarez, should become President until the end of the term. On the 1st of December, 1857, General Comonfort appeared before the Congress then in session, took the oath to support the constitution, and was duly inaugurated.

"But the hopes thus inspired for the establishment of a regular constitutional Government soon proved delusive. President Comonfort, within one brief month, was driven from the capital and the Republic by a military rebellion headed by General Zuloaga; and General Juarez consequently became the constitutional President of Mexico until the 1st day of December, 1861. General Zuloaga instantly assumed the name of President, with indefinite powers; and the entire diplomatic corps, including the minister from the United States, made haste to recognize the authority of the usurper without awaiting instructions from their respective Governments. But Zuloaga was speedily expelled from power. Having encountered the resistance of the people in many parts of the Republic, and a large portion of the capital having 'pronounced' against him, he was in turn compelled to relinquish the Presidency. The field was now cleared for the elevation of General Miramon. He had from the beginning been the favorite of the so-called 'church party,' and was ready to become their willing instrument in maintaining the vast estates and prerogatives of the church, and in suppressing the liberal constitution. An assembly of his partisans, called together without even the semblance of authority, elected him President, but he warily refused to accept the office at their hands. He then resorted to another but scarcely more plausible expedient to place himself in power. This was to identify himself with General Zuloaga, who had just been deposed, and to bring him again upon the stage as President. Zuloaga accordingly reappeared in this character, but his only act was to appoint Miramon 'President substitute' when he again retired. It is under this title that Miramon has since exercised military authority in the city of Mexico, expecting by this stratagem to appropriate to himself the recognition of the foreign ministers which has been granted to Zuloaga. He succeeded. The ministers continued their relations with him as 'President substitute' in the same manner as if Zuloaga had still remained in power. It was by this farce, for it deserves no better name, that Miramon succeeded in grasping the Presidency. The idea that the chief of a nation at his own discretion may transfer to whomsoever he please the trust of governing, delegated to him for the benefit of the people, is too absurd to receive a moment's countenance. But when we reflect that Zuloaga, from whom Miramon

derived his title, was himself a military usurper, having expelled the constitutional President (Comonfort) from office, it would have been a lasting disgrace to the Mexican people had they tamely submitted to the yoke. To such an imputation a large majority proved themselves not to be justly exposed. Although, on former occasions a seizure of the capital and the usurpation of power by a military chieftain had been generally followed, at least for a brief season, by an acquiescence of the Mexican people, yet they now rose boldly and independently to defend their rights.

"President Juarez, after having been driven from the city of Mexico by Zuloaga, proceeded to form a constitutional Government at Guanajuato. From thence he proceeded to Vera Cruz, where he put his administration in successful operation. The people in many portions of the Republic rallied to his support and flew to arms. A civil war thus began between the friends of the constitution and the partisans of Miramon. In this conflict it was not possible for the American people to remain indifferent spectators. They naturally favored the cause of President Juarez, and expressed ardent wishes for his success. Meanwhile, Mr. Forsyth, the American minister, still continued at the city of Mexico in the discharge of his official duties until June, 1858, when he suspended his diplomatic relations with the Miramon government, until he should ascertain the decision of the President. Its outrages towards American citizens and its personal indignities towards himself, without hope of amendment or redress, rendered his condition no longer tolerable. Our relations, bad as they had been under former Governments, had now become still worse under that of Miramon. President Buchanan approved the step which Mr. Forsyth had taken. He was consequently directed to demand his passports, to deposit the archives of the legation with Mr. Black, our consul at the city of Mexico, and to proceed to Vera Cruz, where an armed steamer would be in readiness to convey himself and family to the United States.

"Thus was all diplomatic intercourse finally terminated with the Government of Miramon, whilst none had been organized with that of Juarez. The President entertained some hope that this rupture of diplomatic relations might cause Miramon to reflect seriously on the danger of war with the United States, and might at least arrest further outrages on our citizens. Instead of this, however, he persisted in his course of violence against the few American citizens who had the courage to remain under his power. . The President, in his message of December, 1859, informs Congress that 'murders of a still more atrocious character have been committed in the very heart of Mexico, under the authority of Miramon's government, during the present year. Some of these were worthy only of a barbarous age, and if they had not been clearly proven, would have seemed impossible in a country which claims to be civilized.' And in that of December, 1860, he says: 'To cap the climax, after the battle of Tacubaya, in April, 1859, General Marquez ordered three citizens of the United States, two of them physicians, to be seized in the hospital at that place, taken out and shot, without crime and without trial. This was done, notwithstanding our unfortunate countrymen were at the moment engaged in the holy cause of affording relief to the soldiers of both parties who had been wounded in the battle, without making any distinction between them.

"'Little less shocking was the recent fate of Ormond Chase, who was shot in Tepic, on the 7th of August, by order of the same Mexican general, not only without a trial, but without any conjecture by his friends

of the cause of his arrest.' He was represented to have been a young man of good character and intelligence, who had made numerous friends in Tepic, and his unexpected execution shocked the whole community. 'Other outrages,' the President states, 'might be enumerated, but these are sufficient to illustrate the wretched state of the country and the unprotected condition of the persons and property of our citizens in Mexico.'

"'The wrongs which we have suffered from Mexico are before the world, and must deeply impress every American citizen. A Government which is either unable or unwilling to redress such wrongs is derelict to its highest duties.' Meanwhile the civil war between the parties was conducted with various success, but the scale preponderated in favor of the constitutional cause. Ere long the Government of Juarez extended its authority, and was acknowledged in all the important ports and throughout the sea-coasts and external territory of the Republic, whilst the power of Miramon was confined to the city of Mexico and the surrounding States.

"The final triumph of Juarez became so probable that President Buchanan deemed it his duty to inquire and ascertain whether, according to our constant usage in such cases, he might not recognize the constitutional Government. For the purpose of obtaining reliable information on this point, he sent a confidential agent to Mexico to examine and report the actual condition and prospects of the belligerents. In consequence of his report, as well as of intelligence from other sources, he felt justified in appointing a new minister to the Mexican Republic. For this office Mr. Robert M. McLane, a distinguished citizen of Maryland, was selected. He proceeded on his mission on the 8th of March, 1859, invested 'with discretionary authority to recognize the Government of President Juarez, if on his arrival in Mexico he should find it entitled to such recognition according to the established practice of the United States.' In consequence, on the 7th of April, Mr. McLane recognized the constitutional Government by presenting his credentials to President Juarez, having no hesitation, as he said, 'in pronouncing the Government of Juarez to be the only existing Government of the Republic.' He was cordially received by the authorities at Vera Cruz, who have ever since manifested the most friendly disposition toward the United States.

"Unhappily, however, the constitutional government, though supported by a large majority, both of the people and of the several Mexican states, had not been able to expel Miramon from the capital. In the opinion of the President it had now become the imperative duty of Congress to act without further delay, and to enforce redress from the Government of Miramon for the wrongs it had committed, in violation of the faith of treaties, against citizens of the United States.

"Toward no other Government would we have manifested so long and so patient a forbearance. This arose from our warm sympathies for a neighboring Republic. The territory under the sway of Miramon around the capital was not accessible to our forces without passing through the states under the jurisdiction of the constitutional government. But this, from the beginning, had always manifested the warmest desire to cultivate the most friendly relations with our country. No doubt was therefore entertained that it would cheerfully grant us the right of passage. Moreover, it well knew that the expulsion of Miramon would result in the triumph of the constitutional government and its establishment over the whole territory of Mexico. What was,

also, deemed of great importance by the President, this would remove from us the danger of a foreign war in support of the Monroe doctrine against any European nation which might be tempted, by the distracted condition of the Republic, to interfere forcibly in its internal affairs under the pretext of restoring peace and order."

Mr. Buchanan's "Defense," quoted 2 Curtis' Buch., 215.

"The actual condition of affairs in Mexico is so imperfectly understood here that the President finds it very difficult to give you particular and practical directions for the regulation of your conduct during your mission.

"Our latest information was, in substance, that the provisional government of President Juarez, so long confined to the sea-coasts of the country, had finally overthrown its adversaries and established itself at the capital; that the opposing armies had been demoralized and dispersed, and that there was no longer any armed resistance in the states; that an election for president had been held, in conformity with the constitution of 1857, and that the now provisional president had probably secured a majority of the votes, although the result was as yet not certainly known. The pleasure which these events have inspired is unhappily diminished by rumors that the Government is without sufficient authority or hold on the public confidence to maintain order; that robberies are of frequent occurrence on the high roads, and even that a member of our late legation in the country has been murdered on his way from the City of Mexico to Vera Cruz.

"You will apply yourself at once, with energy and diligence, to investigate the truth of this last-mentioned occurrence, which, if found to have been accurately reported, will not only be regarded as a high offense against the dignity and honor of the United States, but will prove a severe shock to the sensibilities of the American people.

"The President is unable to conceive that any satisfactory explanation of a transaction so injurious to the character of Mexico can be made. He will, however, wait for your report concerning it, though with the deepest anxiety, before taking action upon the subject.

"I find the archives here full of complaints against the Mexican Government for violations of contracts and spoliations and cruelties practiced against American citizens. These complaints have been lodged in this Department, from time to time, during the long reign of civil war in which the factions of Mexico have kept that country involved with a view to having them made the basis of demands for indemnity and satisfaction whenever government should regain in that country sufficient solidity to assume a character for responsibility. It is not the President's intention to send forward such claims at the present moment. He willingly defers the performance of a duty which at any time would seem ungracious, until the incoming administration in Mexico shall have had time, if possible, to cement its authority and reduce the yet disturbed elements of society to order and harmony. You

will, however, be expected, in some manner which will be marked with firmness as well as liberality, to keep the Government there in mind that such of these claims as shall be found just will, in due time, be presented and urged upon its consideration.

"While now, as heretofore, it is a duty of this Government to reason with that of Mexico, and deprecate a continuance of the chronic reign of disorder there, a crisis has unhappily arrived in which the performance of this duty is embarrassed by the occurrence of civil commotions in our own country, by which Mexico, in consequence of her proximity, is not unlikely to be affected. The spirit of discontent seems, at last, to have crossed the border, and to be engaged in an attempt to overthrow the authority of this Government in some parts of the country which adjoin the Mexican Republic. It is much to be feared that new embarrassments of the relations of the two countries will happen when authority so long prostrated on the Mexican side finds the power of the United States temporarily suspended on this side of the frontier. Whatever evils shall thus occur, it is much to be feared, will be aggravated by the intervention of the Indians, who have been heretofore with difficulty restrained from violence, even while the Federal authority has been adequately maintained.

"Both of the Governments must address themselves to this new and annoying condition of things, with common dispositions to mitigate its evils and abridge its duration as much as possible.

"The President does not expect that you will allude to the origin or causes of our domestic difficulties in your intercourse with the Government of Mexico, although that Government will rightfully as well as reasonably ask what are his expectations of their course and their end. On the contrary, the President will not suffer the representatives of the United States to engage in any discussion of the merits of those difficulties in the presence of foreign powers, much less to invoke even their censure against those of our fellow-citizens who have arrayed themselves in opposition to its authority.

"But you are instructed to assure the Government of Mexico that these difficulties, having arisen out of no deep and permanent popular discontent, either in regard to our system of government itself or to the exercise of its authority, and being attended by social evils which are as ruinous as they are unnecessary, while no organic change that is contemplated could possibly bring to any portion of the American people any advantages of security, peace, prosperity, or happiness equal to those which the Federal Union so effectually guarantees, the President confidently believes and expects that the people of the United States, in the exercise of the wisdom that hitherto has never failed them, will speedily and in a constitutional way adopt all necessary remedies for the restoration of the public peace and the preservation of the Federal Union.

"The success of this Government in conducting affairs to t
mation may depend to some small degree on the action of t
ment and people of Mexico in this new emergency. The
could not fail to see that Mexico, instead of being benefited
tration or the obstruction of federal authority in this countr
exposed by it to new and fearful dangers. On the other ha
tion of anarchy in Mexico must necessarily operate as a s
those who are conspiring against the integrity of the Uni
strength and aggrandizement for themselves by conquests
and other parts of Spanish America. Thus, even the dulle
is at last able to see what was long ago distinctly seen by th
endowed with any considerable perspicacity, that peace, ord
stitutional authority in each and all of the several Reput
continent are not exclusively an interest of any one or mo
but a common and indispensable interest of them all.

"This sentiment will serve as a key to open to you, in eve
purposes, wishes, and expectations of the President in reg
mission, which, I hardly need to say, he considers at this ju
haps the most interesting and important one within the wh
our international relations.

"The President of the United States does not know, and
consent to know with prejudice or undue favor any political
ious class, or sectional interest in Mexico. He regrets th
should have occurred to disturb the peaceful and friendly
Mexico with some of the foreign states lately represented at
He hopes most sincerely that those relations may be everywh
and reinvigorated, and that the independence and sovereig
ico and the government which her people seem at last to h
after so many conflicts, may be now universally acknowle
spected.

"Taking into view the actual condition and circumstan
as well as those of the United States, the President is
that the safety, welfare, and happiness of the latter wou
fectually promoted if the former should retain its com
and independence, than they could be by any dismemb
ico, with a transfer or diminution of its sovereignty
thereby a portion or the whole of the country or its sov
be transferred to the United States themselves. The Pr
over, well aware, that the ability of the Government an
ico to preserve and maintain the integrity and the so
Republic might be very much impaired, under existin
by hostile or unfriendly action on the part of the Gov
people of the United States. If he needed any other
tice justice and equality to Mexico, it would be foun
that the very contention and strife in our own cou
moment excite so much domestic disquietude and

throughout a large part of the world, could probably never have happened if Mexico had always been able to maintain with firmness real and unquestioned sovereignty and independence. But if Mexico has heretofore been more unfortunate in these respects than many other modern nations, there are still circumstances in her case which justify a hope that her sad experience may be now coming to an end. Mexico really has, or ought to have, no enemies. The world is deeply interested in the development of her agricultural, and especially her mineral and commercial resources, while it holds in high respect the simple virtues and heroism of her people, and, above all, their inextinguishable love of civil liberty.

"The President, therefore, will use all proper influence to favor the restoration of order and authority in Mexico, and, so far as it may be in his power, he will prevent incursion and every other form of aggression by citizens of the United States against Mexico. But he enjoins you to employ your best efforts in convincing the Government of Mexico and even the people, if, with its approval, you can reach them, that the surest guarantee of their safety against such aggressions is to be found in a permanent restoration of the authority of that Government. If, on the other hand, it shall appear in the sequel that the Mexican people are now only resting a brief season to recover their wasted energies sufficiently to lacerate themselves with new domestic conflicts, then it is to be feared that not only the Government of the United States but many other Governments will find it impossible to prevent a resort to that magnificent country of a class of persons, unhappily too numerous everywhere, who are accustomed to suppose that visionary schemes of public interest, aggrandizement, or reform will justify even lawless invasion and aggression.

"In connection with this point it is proper that you should be informed that the Mexican Government has, through its representative here, recently complained of an apprehended attempt at invasion of the State of Sonora by citizens of California, acting, as is alleged, with the knowledge and consent of some of the public authorities in that State. You will assure the Mexican Government that due care being first taken to verify the facts thus presented, effective means shall be adopted to put our neutrality laws into activity.

"The same representative has also expressed to the President an apprehension that the removal of the Federal troops from the Texan border may be followed by outbreaks and violence there. There is, perhaps, too much ground for this apprehension. Moreover, it is impossible to foresee the course of the attempts which are taking place in that region to subvert the proper authority of this Government. The President, however, meantime directs you to assure the Mexican Government that due attention shall be bestowed on the condition of the frontier, with a view to the preservation and safety of the peaceable inhabitants resid-

ing there. He hopes and trusts that equal attention will be given to this important subject by the authorities of Mexico.

"These matters, grave and urgent as they are, must not altogether withdraw our attention from others to which I have already incidentally alluded, but which require more explicit discussion.

"For a few years past, the condition of Mexico has been so unsettled as to raise the question on both sides of the Atlantic whether the time has not come when some foreign power ought, in the general interest of society, to intervene to establish a protectorate or some other form of Government in that country and guarantee its continuance there. Such schemes may even now be held under consideration by some European nations, and there is also some reason to believe that designs have been conceived in some parts of the United States to effect either a partial dismemberment or a complete overthrow of the Mexican Government, with a view to extend over it the authority of the newly projected confederacy, which a discontented part of our people are attempting to establish in the southern part of our own country. You may possibly meet agents of this projected confederacy, busy in preparing some further revolution in Mexico. You will not fail to assure the Government of Mexico that the President neither has, nor can ever have, any sympathy with such designs, in whatever quarter they may arise or whatever character they may take on.

"In view of the prevailing temper and political habits and opinions of the Mexican people, the President can scarcely believe that the disaffected citizens of our own country, who are now attempting a dismemberment of the American Union, will hope to induce Mexico to aid them by recognizing the assumed independence which they have proclaimed, because it seems manifest to him that such an organization of a distinct Government over that part of the present Union which adjoins Mexico would, if possible, be fraught with evils to that country more intolerable than any which the success of those desperate measures could inflict even upon the United States. At the same time it is manifest that the existing political organization in this country affords the surest guaranty Mexico can have that her integrity, union, and independence will be respected by the whole people of the American Union.

"The President, however, expects that you will be watchful of such designs as I have thus described, however improbable they may seem, and that you will use the most effective measures in your power to counteract any recognition of the projected Confederate States by the Mexican Government, if it shall be solicited.

"Your large acquaintance with the character of the Mexican people, their interests, and their policy will suggest many proper arguments against such a measure, if any are needful beyond the intimations I have already given.

"In conclusion, the President, as you are well aware, is of opinion that, alienated from the United States as the Spanish-American Re-

publics have been for some time past—largely, perhaps, by reason of errors and prejudices peculiar to themselves, and yet not altogether without fault on our own part—that those states and the United States nevertheless, in some respects, hold a common attitude and relation towards all other nations; that it is the interest of them all to be friends as they are neighbors, and to mutually maintain and support each other so far as may be consistent with the individual sovereignty which each of them rightly enjoys, equally against all disintegrating agencies within and all foreign influences or power without their borders.

"The President never for a moment doubts that the republican system is to pass safely through all ordeals and prove a permanent success in our own country, and so to be commended to adoption by all other nations. But he thinks also that that system everywhere has to make its way painfully through difficulties and embarrassments, which result from the action of antagonistical elements which are a legacy of former times and very different institutions. The President is hopeful of the ultimate triumph of this system over all obstacles, as well in regard to Mexico as in regard to every other American state; but he feels that those states are nevertheless justly entitled to a greater forbearance and more generous sympathies from the Government and people of the United States than they are likely to receive in any other quarter.

"The President trusts that your mission, manifesting these sentiments, will reassure the Government of Mexico of his best disposition to favor their commerce and their internal improvements. He hopes, indeed, that your mission, assuming a spirit more elevated than one of merely commerce and conventional amity, a spirit disinterested and unambitious, earnestly American in the continental sense of the word, and fraternal in no affected or mere diplomatic meaning of the term, while it shall secure the confidence and good will of the Government of Mexico, will mark the inauguration of a new condition of things directly conducive to the prosperity and happiness of both nations, and ultimately auspicious to all other republican states throughout the world."

Mr. Seward, Sec. of State, to Mr. Corwin, Ap. 6, 1861; MSS. Inst., Mex.; Dip. Corr., 1861. As to neutrality in connection with Mexico, see § 402.

The refusal of the United States to take part in the movement of France, Spain, and Great Britain to compel Mexico to the payment of her debts to these nations is noticed in 2 Lawrence's Com. sur droit int., 339, 340. See further, 5 Calhoun's Works, 379.

The British and Foreign State Papers for 1861–'2, vol. 52, give the correspondence between Great Britain, France, Spain, and the United States respecting the affairs of Mexico, the non-settlement of claims of British creditors and others, the murder of the British vice-consul at Tasco, the Spanish occupation of Vera Cruz, the suspension of diplomatic relations, and the combined operations of Great Britain, France, and Spain against Mexico.

The claims so pressed may be thus classified:

1. British. On November 16, 1860, the house of the British legation was broken into and £152,000 sterling bonds, belonging to British subjects, were carried off. (See Fraser's Mag., Dec., 1861, where it is said that this attack was a sort of "reprisal" for the action of British naval officers, who had evaded the Mexican tariff on the exportation of silver by carrying off silver in British cruisers.) Damages were also claimed for the murder of a British subject on April 3, 1859. There was also a claim for bonded debts secured by a prior diplomatic arrangement with Mexico.

2. French. During Miramon's revolutionary administration an issue of bonds for $15,000,000 was made through the agency of Jecker, a Swiss banker, the amount to be raised by this process being $750,000. These bonds fell into the hands of Jecker's French creditors. A claim was made also for $12,000,000 for torts on French subjects.

3. Spanish. By the Miramon revolutionary government certain prior Spanish claims of various types were recognized. These, however, were repudiated by the Juarez government. Another grievance was the abrupt dismissal of the Spanish minister by the latter government. (See Tucker's Monroe Doct., 93.) As will be hereafter seen, Great Britain and Spain withdrew from the alliance before the hostile occupation of Mexican soil by France. *Infra*, § 318.

As to the character of the claims in these cases, see *infra*, § 232.

As to forcible redress, *infra*, § 318.

As to negotiations with Spain in reference to the alliance with France and Great Britain in 1860, to compel payment of claims on Mexico, see correspondence in U. S. Dip. Corr. for 1862, 504 *ff*.

"The undersigned, Secretary of State of the United States, has the honor to acknowledge the receipt of a note which was addressed to him on the 30th day of November last, by Mr. Gabriel G. y Tassara, minister plenipotentiary of Her Majesty the Queen of Spain; Mr. Henri Mercier, minister plenipotentiary of His Majesty the Emperor of the French; and the Lord Lyons, minister plenipotentiary of Her Majesty the Queen of the United Kingdom of Great Britain and Ireland.

"With that paper, the aforesaid ministers have submitted the text of a convention which was concluded at London on the 31st of October last, between the sovereigns before named, with a view of obtaining, through a common action, the redress of their grievances against the Republic of Mexico.

"In the preamble the high contracting parties say that they have been placed by the arbitrary and vexatious conduct of the authorities of the Republic of Mexico under a necessity for exacting from those authorities a more effective protection for the persons and properties of their subjects, as well as the execution of obligations contracted with them by the Republic of Mexico, and have agreed to conclude a convention between themselves for the purpose of combining their common action in the case.

"In the first article the high contracting parties bind themselves to make, immediately after the signing of the convention, the necessary arrangements to send to the shores of Mexico land and sea

forces combined, the effective number of which shall be determined in a further exchange of communications between their Governments, but the total of which must be sufficient to enable them to seize and occupy the various fortresses and military positions of the Mexican sea-coasts; also that the commanders of the allied forces shall be authorized to accomplish such other operations as may, on the spot, be deemed most suitable for realizing the end specified in the preamble, and especially for insuring the safety of foreign residents; and that all the measures which are thus to be carried into effect shall be taken in the name and on account of the high contracting parties without distinction of the particular nationality of the forces employed in executing them.

"In the second article the high contracting parties bind themselves not to seek for themselves, in the employment of the coercive measures foreseen by the present convention, any acquisition of territory, or any peculiar advantage, and not to exercise in the subsequent affairs of Mexico any influence of a character to impair the right of the Mexican nation to choose and freely to constitute the form of its own government.

"In the third article the high contracting parties agree that a commission composed of three commissioners, one appointed by each of the contracting powers, should be established, with full power to determine all questions which may arise for the employment and distribution of the sums of money which shall be recovered from Mexico, having regard to the respective rights of the contracting parties.

"In the fourth article the high contracting parties, expressing their desire that the measures which it is their intention to adopt may not have an exclusive character, and recognizing the fact that the Government of the United States, like themselves, has claims of its own to enforce against the Mexican Republic, agree that, immediately after the signing of the present convention, a copy of it shall be communicated to the Government of the United States, and that this Government shall be invited to accede to it, and that in anticipation of such accession, their respective ministers at Washington shall be furnished with full powers to conclude and sign, collectively or severally, with a plenipotentiary of the United States, to be designated by the President, such an instrument.

"But as the high contracting powers would expose themselves, in making any delay in carrying into effect articles one and two of the convention, to failure in the end which they wish to attain, they have agreed not to defer, with a view to obtaining the accession of the United States, the commencement of the stipulated operations beyond the period at which their combined forces may be united in the vicinity of Vera Cruz.

"The plenipotentiaries, in their note to the undersigned, invite the United States to accede to the convention. The undersigned, having

submitted the subject to the President, will proceed to communicate his views thereon.

"First. As the undersigned has heretofore had the honor to inform each of the plenipotentiaries now addressed, the President does not feel himself at liberty to question, and he does not question, that the sovereigns represented have undoubted right to decide for themselves the fact whether they have sustained grievances, and to resort to war against Mexico for the redress thereof, and have a right also to levy the war severally or jointly.

"Secondly. The United States have a deep interest, which, however, they are happy to believe is an interest held by them in common with the high contracting powers and with all other civilized states, that neither of the sovereigns by whom the convention has been concluded shall seek or obtain any acquisition of territory or any advantage peculiar to itself, and not equally left open to the United States and every other civilized state, within the territories of Mexico, and especially that neither one nor all of the contracting parties shall, as a result or consequence of the hostilities to be inaugurated under the convention, exercise in the subsequent affairs of Mexico any influence of a character to impair the right of the Mexican people to choose and freely to constitute the form of its own government.

"The undersigned renews on this occasion the acknowledgment heretofore given, that each of the high contracting parties had informed the United States substantially that they recognized this interest, and he is authorized to express the satisfaction of the President with the terms in which that recognition is clearly embodied in the treaty itself.

"It is true, as the high contracting parties assume, that the United States have, on their part, claims to urge against Mexico. Upon due consideration, however, the President is of opinion that it would be inexpedient to seek satisfaction of their claims at this time through an act of accession to the convention. Among the reasons for this decision which the undersigned is authorized to assign, are, first, that the United States, so far as it is practicable, prefer to adhere to a traditional policy recommended to them by the Father of their Country and confirmed by a happy experience, which forbids them from making alliances with foreign nations; second, Mexico being a neighbor of the United States on this continent, and possessing a system of government similar to our own in many of its important features, the United States habitually cherish a decided good-will toward that Republic, and a lively interest in its security, prosperity, and welfare. Animated by these sentiments the United States do not feel inclined to resort to forcible remedies for their claims at the present moment, when the Government of Mexico is deeply disturbed by factions within, and exposed to war with foreign nations. And, of course, the same sentiments render them still more disinclined to allied war against Mexico than to war to be waged against her by themselves alone.

"The undersigned is further authorized to state to the plenipotentiaries, for the information of the sovereigns of Spain, France, and Great Britain, that the United States are so earnestly anxious for the safety and welfare of the Republic of Mexico, that they have already empowered their minister residing there to enter into a treaty with the Mexican Republic, conceding to it some material aid and advantages which it is hoped may enable that Republic to satisfy the just claims and demands of the said sovereigns, and so avert the war which these sovereigns have agreed among each other to levy against Mexico. The sovereigns need not be informed that this proposal to Mexico has been made, not in hostility to them, but with a knowledge of the proceeding formally communicated to them, and with the hope that they might find, through the increased ability of Mexico to result from the treaty, and her willingness to treat with them upon just terms, a mode of averting the hostilities which it is the object of the convention now under consideration to inaugurate. What has thus far been done by the American minister at Mexico, under those instructions, has not yet become known to this Government, and the information is looked for with deep interest.

"Should these negotiations offer any sufficient grounds on which to justify a proposition to the high contracting parties in behalf of Mexico, the undersigned will hasten to submit such a proposition to those powers. But it is to be understood, first, that Mexico shall have acceded to such a treaty; and secondly, that it shall be acceptable to the President and Senate of the United States.

"In the mean time the high contracting powers are informed that the President deems it his duty that a naval force should remain in the Gulf of Mexico, sufficient to look after the interests of American citizens in Mexico during the conflict which may arise between the high contracting parties and that Republic; and that the American minister residing in Mexico be authorized to seek such conference in Mexico with the beligerent parties, as may guard each of them against inadvertent injury to the just rights of the United States, if any such should be endangered.

"The undersigned having thus submitted all the views and sentiments of this Government on this important subject, to the high contracting parties, in a spirit of peace and friendship, not only towards Mexico but towards the high contracting parties themselves, feels assured that there will be nothing in the watchfulness which it is thus proposed to exercise, that can afford any cause for anxiety to any of the parties in question."

Mr. Seward, Sec. of State, to Messrs. Tassara, Mercier and Lord Lyons, Dec. 4, 1861; MSS. Notes, Spain; 52 British and Foreign State Papers, 394.

As to procedure of British and French Governments to enforce these claims, see *infra.*, §§ 232, 318.

"The President, however, deems, it his duty to express to the allies, in all candor and frankness, the opinion that no monarchical government which could be founded in Mexico, in the presence of foreign navies

and armies in the waters and upon the soil of Mexico, would have any prospect of security or permanence."

Mr. Seward, Sec. of State, to Mr. Adams, Mar. 3, 1862; MSS. Inst., Gr. Brit. Mr. Seward's report of April 14, 1862, on the "present condition of Mexico," with the accompanying correspondence, will be found in House Ex. Doc., No. 100, 37th Cong., 2d sess. His report on the same subject, of Feb. 4, 1863 is in House Ex. Doc. No. 54, 37th Cong., 3d sess; same subject, report of June 16, 1864, Senate Ex. Doc. No. 11, 38th Cong., 2d sess.; Sen. Ex. Doc. No. 33, same sess. (See §§ 232, 318.)

"The undersigned, Secretary of State of the United States, has the honor to acknowledge the reception of the note of his excellency Mr. Romero, chargé d'affaires of the Republic of Mexico, which bears the date of December 20, and relates to the subject of the clearances of certain articles of merchandise at the city of New York, alleged by Mr. Romero to have been made, on account of French subjects, for the use of the French Government in its war with Mexico.

"In the note which the undersigned addressed to Mr. Romero on this subject, on the 15th December last, and also in an exposition of the same subject which was made by the Secretary of the Treasury, and which was submitted to Mr. Romero, it was explained that the clearances of which he complains were made in conformity with the laws of the United States, and with the practical construction of these laws which has prevailed from the foundation of this Government, a period which includes wars, more or less general, throughout the world, and involving many states situated on the American and European continents.

"The undersigned, after the most careful reading of Mr. Romero's note, is unable to concede that the Government of the United States has obliged itself to prohibit the exportation of mules and wagons, for which it has no military need, from its ports on French account because, being in a state of war and needing for the use of the Government all the fire-arms made and found in the country, it has temporarily forbidden the export of such weapons to all nations.

"Nor is it perceived how the treaty between the United States and Mexico, to which Mr. Romero refers, bears upon the question, since the United States have not set up or thought of setting up any claim that Mexico shall be required to admit into her ports any articles of merchandise, contraband of war, which may be exported from the United States on French or any other account.

"The undersigned is equally unable to perceive the bearing of Mr. Romero's allusions to the correspondence which has occurred between this Government and that of Great Britain, in which complaints have been made by the United States that Great Britain wrongfully and injuriously recognized as a public belligerent an insurrectionary faction which has arisen in this country; has proclaimed neutrality between that faction and this Government, and has suffered armed naval expe-

ditions to be fitted out in British ports to depredate on the commerce of the United States, in violation of, as was believed, the Queen's proclamation, and of the municipal laws of the United Kingdom."

Mr. Seward, Sec. of State, to Mr. Romero, Jan. 7, 1863; MSS. Notes, Mex.; Dip. Corr., 1863.

"Candor obliges me to commence my observations upon the subject with an acknowledgment of the very generous manner in which Mr. Drouyn de l'Huys has opened the way to a dispassionate and friendly consideration of the complaint which he has preferred. He has not only reassured you of the friendly spirit of the Emperor towards the United States, but he has also, with marked decision and energy, reaffirmed to you that France has no purpose in Mexico beyond asserting just claims against her, obtaining payment of the debt due, with the expenses of the invasion, and vindicating by victory the honor of the French flag, and that France does not mean to colonize in Mexico, or to obtain Sonora or any other section permanently, and that all allegations propagated through the newspapers conflicting with these assurances are untrue.

"Your reply to these remarks of Mr. Drouyn de l'Huys, namely, that in all my correspondence with you, whether public or private, I have averred that this Government has no purpose to interfere in any way with the war between France and Mexico, was as truthful as it was considerate and proper. The United States have not disclaimed, and can never under existing circumstances disclaim, the interest they feel in the safety, welfare, and prosperity of Mexico, any more than they can relinquish or disown their sentiments of friendship and good-will towards France, which began with their national existence, and have been cherished with growing earnestness ever since. When the two nations towards which they are thus inclined are found engaged in such a war as Mr. Drouyn de l'Huys has described, the United States can only deplore the painful occurrence, and express in every way and everywhere their anxious desire that the conflict may be brought to a speedy close by a settlement consistent with the stability, prosperity, and welfare of the parties concerned. The United States have always acted upon the same principle of forbearance and neutrality in regard to wars between powers with which our own country has maintained friendly relations, and they believe that this policy could not in this, more than in other cases, be departed from with advantage to themselves or to the interests of peace throughout the world."

Mr. Seward, Sec. of State, to Mr. Dayton, May 8, 1863; MSS. Inst., France; Dip. Corr., 1863.

"When France made war against Mexico, we asked of France explanations of her objects and purposes. She answered, that it was a war for the redress of grievances; that she did not intend to permanently occupy or dominate in Mexico, and that she should leave to the people of

Mexico a free choice of institutions of government. Under these circumstances the United States adopted, and they have since maintained, entire neutrality between the belligerents, in harmony with the traditional policy in regard to foreign wars. The war has continued longer than was anticipated. At different stages of it France has, in her intercourse with us, renewed the explanations before mentioned. The French army has now captured Pueblo and the capital, while the Mexican Government, with its principal forces, is understood to have retired to San Luis Potosi, and a provisional Government has been instituted under French auspices in the city of Mexico, which, being supported by arms, divides the actual dominion of the country with the Mexican Government, also maintained by armed power. That provisional Government has neither made nor sought to make any communication to the Government of the United States, nor has it been in any way recognized by this Government. France has made no communication to the United States concerning the provisional Government which has been established in Mexico, nor has she announced any actual or intended departure from the policy in regard to that country which her beforementioned explanations have authorized us to expect her to pursue. The United States have received no communications relating to the recent military events in Mexico from the recognized Government of that country.

"The Imperial Government of Austria has not explained to the United States that it has an interest in the subject, or expressed any desire to know their views upon it. The United States have heretofore, on proper occasions, frankly explained to every party having an interest in the question the general views and sentiments which they have always entertained, and still entertain, in regard to the interests of society and government on this continent. Under these circumstances it is not deemed necessary for the representatives of the United States, in foreign countries, to engage in the political debates which the present unsettled aspect of the war in Mexico has elicited. You will be promptly advised if a necessity for any representations to the Government of Austria shall arise."

Mr. Seward, Sec. of State, to Mr. Motley, Sept. 11, 1863; MSS. Inst., Austria; Dip. Corr., 1863. See further as to the attitude of Great Britain and the United States as to the allied attack on Mexico, *infra*, §§ 232, 318.

"The French forces are understood to hold in subjection to the new provisional Government establishedin Mexico three of the States, while all the other constituent members of the Republic of Mexico still remain under its authority. There are already indications of designs in those States to seek aid in the United States, with the consent of this Government, if attainable, and without it if it shall be refused, and for this purpose inducements are held out well calculated to excite sympathies in a border population. The United States Government has hitherto practiced strict neutrality between the French and Mexico, and all the

more cheerfully because it has relied on the assurances given by the French Government that it did not intend permanent occupation of that country or any violence to the sovereignty of its people. The proceedings of the French in Mexico are regarded by many in that country and in this as at variance with those assurances. Owing to this circumstance, it becomes very difficult for this Government to enforce a rigid observance of its neutrality laws. The President thinks it desirable that you should seek an opportunity to mention these facts to Mr. Drouyn de l'Huys, and to suggest to him that the interests of the United States, and, as it seems to us, the interests of France herself, require that a solution of the present complications in Mexico be made as early as may be convenient upon the basis of the unity and independence of Mexico. I cannot be misinterpreting the sentiments of the United States in saying that they do not desire an annexation of Mexico or any part of it, nor do they desire any special interest, control, or influence there, but they are deeply interested in the re-establishment of unity, peace, and order in the neighboring Republic, and exceedingly desirous that there may not arise out of the war in Mexico any cause of alienation between them and France. Insomuch as these sentiments are by no means ungenerous, the President unhesitatingly believes that they are the sentiments of the Emperor himself in regard to Mexico."

Mr. Seward, Sec. of State, to Mr. Dayton, Sept. 21, 1863; MSS. Inst., France; Dip. Corr., 1863.

"Your interesting dispatch of September 1 (No. 32) has been received. The United States are not indifferent to the events which are occurring in Mexico. They are regarded, however, as incidents of the war between France and Mexico. While the Governments of those two countries are not improperly left in any uncertainty about the sentiments of the United States, the reported relations of a member of the Imperial family of Austria to those events do not seem sufficient to justify this Government in making any representations on that subject to the Government of the Emperor. His candor and fairness towards the United States warrant the President in believing, as he firmly does, that His Majesty will not suffer his Government to be engaged in any proceeding hostile or injurious to the United States."

Mr. Seward, Sec. of State, to Mr. Motley, Sept. 26, 1863; MSS. Inst., Austria; Dip. Corr., 1863.

"It is well understood that through a long period, closing in 1860, the manifest strength of this nation was a sufficient protection, for itself and for Mexico, against all foreign states. That power was broken down and shattered in 1861 by faction. The first fruit of our civil war was a new, and in effect, though not intentionally so, an unfriendly attitude assumed by Great Britain, France, and Spain, all virtually, and the two first-named powers avowedly, moving in concert. While I cannot con-

less a fear on the part of this Government that any one or all of time powers combining with the insurgents could overthrow would have been manifestly presumptuous, at any time since traction seized the American people, to have provoked such vention, or to have spared any allowable means of preventing unceasing efforts of this Department in that direction have from this ever-present consideration. If in its communicat majestic efforts of the Government to subdue the insurrectio remove the temptation which it offered to foreign powers, hav ured so largely as to impress my correspondents with the c that the President relies always mainly on the national power on the forbearance of those who it is apprehended may becom mies, it is because the duty of drawing forth and directing tl power of the nation has rested upon distinct Departments, whi one belonged the especial duty of holding watch against forei intrusion, and intervention. With these general remarks I p explain the President's views in regard to the first of the two mentioned, namely, the attitude of France in regard to the in the United States.

"We know from many sources, and even from the Empero statement, that, on the breaking out of the insurrection, he ad current opinion of European statesmen that the efforts of this ment to maintain and preserve the Union would be unsucces this prejudgment we attribute his agreement with Great Brit in concert with her upon the questions which might arise out surrection; his concession of a belligerent character to the in his repeated suggestions of accommodation by this Governm the insurgents; and his conferences on the subject of a recog would be disingenuous to withhold an expression of the natio tion that these proceedings of the Emperor have been very inj United States, by encouraging and thus prolonging the insurr the other hand, no statesman of this country is able to co reasonable motive, on the part of either France or the Em or to wish injury to the United States. Every statesman o States cherishes a lively interest in the welfare and greatne and is content that she shall enjoy peacefully and in unb perity the administration of the Emperor she has chose not an acre of territory or a port which we think Fran covet; nor has she any possession that we could accep resign it into our hands. Nevertheless, when recurrin Emperor has already done, we cannot, at any time, fee under mistaken impressions of our exposure, he might n self still further in the way of encouragement and aid to We know their intrigues in Paris are not to be lightly re the Emperor has held an unfavorable opinion of our n and unity, we, on the contrary, have as constantly indul

dence in both. Not merely the course of events, but that of time, also, runs against the insurgents and reinvigorates the national strength and power. We desire, therefore, that he may have the means of understanding the actual condition of affairs in our country. We wish to avoid anything calculated to irritate France, or to wound the just pride and proper sensibilities of that spirited nation, and thus to free our claim to her forbearance, in our present political emergency, from any cloud of passion or prejudice. Pursuing this course, the President hopes that the prejudgment of the Emperor against the stability of the Union may the sooner give way to convictions which will modify his course, and bring him back again to the traditional friendship which he found existing between this country and his own, when, in obedience to her voice, he assumed the reins of empire. These desires and purposes do not imply either a fear of French hostility, or any neglect of a prudent posture of national self-reliance.

"The subject upon which I propose to remark, in the second place, is the relation of France toward Mexico. The United States hold, in regard to Mexico, the same principles that they hold in regard to all other nations. They have neither a right nor a disposition to intervene by force in the internal affairs of Mexico, whether to establish and maintain a Republic or even a domestic government there, or to overthrow an imperial or a foreign one, if Mexico chooses to establish or accept it. The United States have neither the right nor the disposition to intervene by force on either side in the lamentable war which is going on between France and Mexico. On the contrary, they practice in regard to Mexico, in every phase of that war, the non-intervention which they require all foreign powers to observe in regard to the United States. But, notwithstanding this self-restraint, this Government knows full well that the inherent normal opinion of Mexico favors a government there republican in form and domestic in its organization, in preference to any monarchical institutions to be imposed from abroad. This Government knows, also, that this normal opinion of the people of Mexico resulted largely from the influence of popular opinion in this country, and is continually invigorated by it. The President believes, moreover, that this popular opinion of the United States is just in itself, and eminently essential to the progress of civilization on the American continent, which civilization, it believes, can and will, if left free from European resistance, work harmoniously together with advancing refinement on the other continents. This Government believes that foreign resistance, or attempts to control American civilization, must and will fail before the ceaseless and ever-increasing activity of material, moral, and political forces, which peculiarly belong to the American continent. Nor do the United States deny that, in their opinion, their own safety and the cheerful destiny to which they aspire are intimately dependent on the continuance of free republican institutions throughout America. They have submitted these opinions to the Emperor of France, on proper

occasions, as worthy of his serious consideration, in determinin
would conduct and close what might prove a successful war ir
Nor is it necessary to practice reserve upon the point, that i
should, upon due consideration, determine to adopt a policy i
adverse to the American opinions and sentiments which I have d
that policy would probably scatter seeds which would be fi
jealousies, which might ultimately ripen into collision betwee
and the United States and other American Republics. An ill
of this danger has occurred already. Political rumor, which i
mischievous, one day ascribes to France a purpose to seize
Grande, and wrest Texas from the United States; another da
advises us to look carefully to our safety on the Mississippi;
day we are warned of coalitions to be formed, under French pa
between the regency established in Mexico and the insurgent
Richmond. The President apprehends none of these things.
not allow himself to be disturbed by suspicions so unjust to Fr
so unjustifiable in themselves; but he knows, also, that such su
will be entertained more or less extensively by this country, a
nified in other countries equally unfriendly to France and to A
and he knows, also, that it is out of such suspicions that the f
of national animosity is most frequently woven. He believes
Emperor of France must experience desires as earnest as our
the preservation of that friendship between the two nations wh
full of guarantees of their common prosperity and safety.
this, the President would be wanting in fidelity to France, as
our own country, if he did not converse with the Emperor w
sincerity and friendship upon the attitude which France is to
regard to Mexico. The statements made to you by M. Drouyn
concerning the Emperor's intentions, are entirely satisfactor
permitted to assume them as having been authorized to be m
Emperor in view of the present condition of affairs in Me
true, as I have before remarked, that the Emperor's purpose
after change with changing circumstances. We, ourselv
are not unobservant of the progress of events at home and
in no case are we likely to neglect such provision for our
every sovereign state must always be prepared to fall bac
nations with which they have lived in friendship cease to
moral and treaty obligations. Your own discretion will
as to how far and in what way the public interests will b
submitting these views to the consideration of M. Drou

Mr. Seward, Sec. of State, to Mr. Dayton, Sept. 26, 1863; Mi
Dip. Corr., 1863.

"You have proceeded very properly in giving to Co
copy of my dispatch to Mr. Dayton of the 3d of Ma
Government desires to practice no concealment in its

foreign states. During the discussion concerning Mexico, and France, and the United States, which has been going on in Europe, I have refrained from instructing you to speak for the United States. This reserve has been practiced because the questions immediately concern only the three states mentioned, and the personal relation to them of the Austrian grand duke is an incident which could only bring the Imperial Royal Government under any responsibility to the United States when that Government should attempt or propose to violate some actual political right or disregard some practical interest which it would be the duty of the President to maintain or assert. But in this course of proceeding it has not been my intention to deny to you a full knowledge of the position of the President in regard to the questions debated. France is at war with Mexico and at peace with the United States, and a civil war is raging in the United States. I am to speak of the attitude of France towards the United States in relation to this civil war, and also to speak of the attitude of France towards Mexico, as it bears on the United States. For the sake of perspicuity I keep the two topics distinctly separate, and I treat the last one first.

"We know from many sources, and even from the direct statement of the Emperor of France, that on the breaking out of the insurrection he adopted the then current opinion of European statesmen that the efforts of this Government to suppress it would be unsuccessful. To this prejudgment we attribute his agreement with Great Britain to act in concert with her upon international questions which might arise out of the conflict, his practical concession of a belligerent character to the insurgents, his repeated suggestions of accommodations by this Government with the insurgents, and his conferences on the subject of a recognition. These proceedings of the Emperor of France have been very injurious to the United States by encouraging and thus prolonging the insurrection. On the other hand, no statesman of this country is able to conceive of a reasonable motive on the part of France or the Emperor to do or to wish injury to the United States. Every statesman in the United States cherishes a lively interest in the welfare and greatness of France, and is content that she shall peacefully and in unbounded prosperity enjoy the administration of the Emperor she has chosen. We have not an acre of territory nor a fort which we think France could wisely covet, nor has she any possession that we could accept if she would resign it into our hands. Nevertheless, when recurring to what the Emperor of France has already done, we cannot at any time feel assured that, under mistaken impressions of our embarrassments in consequence of a lamentable civil war, he may not go further in the way of encouragement to the insurgents, whose intrigues in Paris we understand and do not underestimate. While the Emperor of France has held an unfavorable opinion of our national strength and unity, we, on the contrary, have as constantly indulged an entire confidence in both. Not merely the course of events, but that of time

also opposes the insurrection and reinvigorates the national str and power. Under these convictions we avoid everything calc to irritate France by wounding the just pride and proper sensit of that spirited nation, and thus we hope to free our claim to h forbearance in our present political emergency from any cloud o sion or prejudice. Pursuing this course, the President hopes th prejudgment of the Emperor against the stability of the Unio give way to considerations which will modify his course and brin back to the traditional friendship which he found existing betwee country and his own when, in obedience to her voice, he assume administration of her Government. These desires and purposes c do not imply either a fear of imperial hostility or any neglect of dent posture of national self-reliance, and in that posture we cons aim to stand.

"I speak next of the relation of France towards Mexico. Unti our prestige was a protection to her and to all other republican on this continent. That prestige has been temporarily broken domestic faction and civil war. France has invaded Mexico, an exists between those two countries. The United States hold, in r to these two states and their conflict, the same principle that the in relation to all other nations and their mutual wars. They neither a right nor any disposition to intervene by force in the in affairs of Mexico, whether to establish or to maintain a republi even a domestic Government there, or to overthrow an imperial or eign one if Mexico shall choose to establish or accept it. The U States have not a right nor a disposition to intervene by force on side in the lamentable war which is going on between Franc Mexico. On the contrary, they practice, in regard to Mexico, in phase of the war, the non-intervention which they require all f powers to observe in regard to the United States. But notwith ing this self-restraint, this Government knows full well that the ent normal opinion of Mexico favors a Government there repu in form and democratic in its organization in preference to any archical institutions to be imposed from abroad. This Gover knows also that this normal opinion of the people of Mexico re largely from the influence of popular opinion in this country, constantly invigorates it. The President, moreover, believes tha popular opinion of the United States is just in itself and emi essential to the progress of civilization on the American cont which civilization he believes can and will, if left free from Eur resistance, work harmoniously together with advancing refineme the other continents. This Government believes that all foreign ance to American civilization, and all attempts to control it, mus will fail before the ceaseless and ever-increasing activity of ma moral, and political forces which peculiarly belong to the America

tinent. Nor do the United States deny that, in their opinion, their own safety and the cheerful destiny to which they aspire are intimately dependent on the continuance of free republican institutions throughout America, and that their policy will always be directed to that end. They have frankly, and on proper occasions, submitted these opinions to the Emperor of France, as worthy of serious consideration, in determining how he would conduct and close what might prove a successful war in Mexico. Nor do we practice reserve upon the point that if France should, upon due consideration, determine to adopt a policy in Mexico adverse to the American opinions and sentiments which I have described, that policy would probably scatter seeds which would be fruitful of jealousies that might ultimately ripen into collisions between France and the United States and other American Republics. An illustration of this danger has occurred already. Political rumor, which is always suspicious, one day ascribes to France a purpose to seize the Rio Grande and wrest Texas from the United States. Another day rumor advises us to look carefully to our safety on the Mississippi. Another day we are warned of coalitions to be formed under French patronage between the regency that has been recently set up at the city of Mexico and the insurgent cabal at Richmond. The President apprehends none of these things, and does not allow himself to be disturbed by suspicions. But he knows also that such suspicions will be entertained more or less extensively in this country, and will be magnified in other countries, and he knows also that it is out of such suspicions that the fatal web of national animosity is most frequently woven. The President, upon the assurances which he has received from the Emperor of France, expects that he will neither deprive the people of Mexico of their free choice of government nor seek to maintain any permanent occupation or dominion there.

"It is true that the purposes or policy of the Emperor of France, in these respects, may change with changing circumstances. Although we are confiding, we are not therefore unobservant, and in no case are we likely to neglect such provision for our own safety as every people must always be prepared to fall back upon when a nation with which they have lived in friendship ceases to respect its moral and treaty obligations.

"In giving you this summary of our positions, I have simply drawn off from the records the instructions under which Mr. Dayton is acting at Paris. I remain of the opinion that national dignity is best conserved by confining the discussion of these affairs to the Cabinets of the United States, France, and Mexico, and that no public interest is to be advanced by opening it at Vienna, and therefore I do not direct you to communicate this dispatch to the imperial royal court."

Mr. Seward, Sec. of State, to Mr. Motley, Oct. 9, 1863; MSS. Inst., Austria; Dip. Corr., 1863.

"I have the honor to acknowledge the reception of your dispatch o the 9th instant (No. 361), which brings me the views expressed by Mr Drouyn de l'Huys concerning the situation in Mexico. Various consid erations have induced the President to avoid taking any part in th speculative debates bearing on that situation which have been carried on in the capitals of Europe as well as in those of America. A deter mination to err on the side of strict neutrality, if we err at all, in a wa which is carried on between two nations with which the United State are maintaining relations of amity and friendship, was prominent among the considerations to which I have thus referred.

"The United States, nevertheless, when invited by France or Mexico cannot omit to express themselves with perfect frankness upon new in cidents, as they occur, in the progress of that war. Mr. Drouyn d l'Huys now speaks of an election which he expects to be held in Mex ico, and to result in the choice of His Imperial Highness the Princ Maximilian of Austria to be Emperor of Mexico. We learn from othe sources that the prince has declared his willingness to accept an imperia throne in Mexico on three conditions, namely: First, that he shall b called to it by the universal suffrage of the Mexican nation; secondly that he shall receive indispensable guarantees for the integrity and in dependence of the proposed Empire; and, thirdly, that the head of hi family, the Emperor of Austria, shall acquiesce.

"Referring to these facts, Mr. Drouyn de l'Huys intimates that a early acknowledgment of the proposed Empire by the United State would be convenient to France, by relieving her, sooner than might b possible under other circumstances, from her troublesome complication in Mexico.

"Happily the French Government has not been left uninformed tha in the opinion of the United States, the permanent establishment of foreign and monarchical government in Mexico will be found neith easy nor desirable. You will inform Mr. Drouyn de l'Huys that th opinion remains unchanged. On the other hand, the United Stat cannot anticipate the action of the people of Mexico, nor have they t least purpose or desire to interfere with their proceedings, or control interfere with their free choice, or disturb them in the enjoyment whatever institutions of government they may, in the exercise of an a solute freedom, establish. It is proper, also, that Mr. Drouyn de l'Hu should be informed that the United States continue to regard Mexi as the theater of a war which has not yet ended in the subversion of t Government long existing there, with which the United States remai in the relation of peace and sincere friendship; and that, for this re son, the United States are not now at liberty to consider the questio of recognizing a Government which, in the further chances of war, ma come into its place. The United States, consistently with their principles can do no otherwise than leave the destinies of Mexico in the keepin of her own people, and recognize their sovereignty and independence i

whatever form they themselves shall choose that this sovereignty and independence shall be manifested."

Mr. Seward, Sec. of State, to Mr. Dayton, Oct. 23, 1863; MSS. Inst., France; Dip. Corr., 1863.

On April 4, 1864, it was resolved without dissent, by the House of Representatives, that "the Congress of the United States are unwilling by silence to have the nations of the world under the impression that they are indifferent spectators of the deplorable events now transpiring in the Republic of Mexico, and that they think fit to declare that it does not accord with the policy of the United States to acknowledge any monarchical government erected on the ruins of any republican government in America under the auspices of any European power."

As to effect of this resolution in France, see Tucker's Monroe Doct., 103.

Mr. Seward's report of May 28, 1864, as to the course of trade between the United States and France during the French and Mexican war, is given in Senate Ex. Doc. No. 49, 38th Cong., 1st sess.

As to neutrality observed between the belligerents, see Mr. Seward, Sec. of State to Mr. de Montholon, Nov. 10, 1865; MSS. Notes, France.

Mr. Seward's policy of non-intervention in the Maximilian war in Mexico is vindicated in 103 N. Am. Rev., 498, Oct., 1866.

"We recognize the right of sovereign nations to carry on war with each other if they do not invade our right, or menace our safety or just influence. The real cause of our national discontent is that the French army which is now in Mexico is invading a domestic republican government there, which was established by her people, and with whom the United States sympathize most profoundly, for the avowed purpose of suppressing it, and establishing upon its ruins a foreign monarchical government, whose presence there, so long as it should endure, could not but be regarded by the people of the United States as injurious and menacing to their own chosen and endeared republican institutions."

Mr. Seward, Sec. of State, to Mr. de Montholon, Dec. 6, 1865; MSS. Notes, France.

"It has been the President's purpose that France should be respectfully informed upon two points, namely; first, that the United States earnestly desire to continue and to cultivate sincere friendship with France; secondly, that this policy would be brought into imminent jeopardy unless France could deem it consistent with her interest and honor to desist from the prosecution of armed intervention in Mexico to overthrow the domestic republican government existing there, and to establish upon its ruins the foreign monarchy which has been attempted to be inaugurated in the capital of that country."

Mr. Seward, Sec. of State, to Mr. Bigelow, Dec. 16, 1865; MSS. Inst., France.

See further, same to same, July 13, 1865.

On this subject see Tucker's Monroe Doct., 97 *ff*.

As to French occupation of Mexico, see Mr. Seward's report of Dec. 21, 1865, with documents annexed; Sen. Ex. Doc. Nos. 5, 6, 39th Cong., 1st sess. As to French evacuation of Mexico, see House Ex. Doc. No. 93, 39th Cong., 1st sess.

For President's message on Mexican affairs, with documents, see House Ex. Doc. No. 20, 30th Cong., 1st sess.

"With these explanations I proceed to say that, in the opinion of the President, France need not for a moment delay her promised withdrawal of military forces from Mexico, and her putting the principle of non-intervention into full and complete practice in regard to Mexico, through any apprehension that the United States will prove unfaithful to the principles and policy in that respect, which, on their behalf, it has been my duty to maintain in this now very lengthened correspondence. The practice of this Government, from its beginning, is a guarantee to all nations of the respect of the American people for the free sovereignty of the people in every other state."

Mr. Seward, Sec. of State, to Mr. de Montholon, Feb. 12, 1866; MSS. Notes, France.

For vindication of the policy of the United States towards Maximilian and the French invasion of Mexico in 1863–'6, see Mr. Seward, Sec. of State, to Mr. de Montholon, Ap. 25, 1866; MSS. Notes, France.

The United States, it was said by Mr. Seward, in a letter of March 19, 1866, to Mr. Motley (Austria), "cannot regard with unconcern" the enlistment in Paris of troops to aid the Emperor Maximilian in Mexico.

See also Mr. Seward, Sec. of State, to Mr. Motley, March 19, 1866; MSS. Inst., Austria.

Mr. Seward's report on Mexico, of March 20, 1866, is in House Ex. Doc. No. 73, 39th Cong., 1st sess.

On April 6, 1866, Mr. Motley was instructed by Mr. Seward, to state to the Austrian Government "that in the event of hostilities being carried on hereafter in Mexico by Austrian subjects, under the command or with the sanction of the Government of Vienna, the United States will feel themselves at liberty to regard those hostilities as constituting a state of war by Austria against the Republic of Mexico; and in regard to such war, waged at this time and under existing circumstances, the United States could not engage to remain as silent and neutral spectators."

See also Mr. Seward to Mr. Motley, Ap. 16, 1866, and also confidential letter of same date, in which Mr. Motley was instructed to withdraw from Vienna in case troops were sent from Austria to Mexico. The result was that no troops were sent from Austria to Mexico. See Mr. Seward to Mr. Motley, June 9, 1866; MSS. Inst., Austria.

"You are aware that a friendly and explicit arrangement exists between this Government and the Emperor of France, to the effect that he will withdraw his expeditionary military forces from Mexico in three parts; the first of which shall leave Mexico in November next, the second in March next, and the third in November, 1867, and that upon the evacuation being thus completed, the French Government will immediately come upon the ground of non-intervention in regard to Mexico which is held by the United States.

"Doubts have been entertained and expressed in some quarters upon the question whether the French Government will faithfully execute this agreement. No such doubts have been entertained by the Presi-

dent, who has had repeated and even recent assurances that the complete evacuation of Mexico by the French will be consummated at the periods mentioned, or earlier if compatible with climatical, military, and other conditions."

Mr. Seward, Sec. of State, to Mr. Campbell, Oct. 25, 1866; MSS. Inst., Mex.

As to attempts of Santa Anna and Ortego in 1866 to overthrow Mexican Government, see Mr. Seward's Rep., Dec. 14, 1866; House Ex. Doc. No. 17, 39th Cong., 2d sess.

As to proceedings in Mexico under French occupation, see Mr. Seward's report, Jan. 29, 1867; House Ex. Doc. No. 76, 39th Cong., 2d sess.

As to subsequent proceedings in Mexico, see Senate Ex. Doc. No. 20, 40th Cong., 1st sess.; House Ex. Doc. No. 30, 40th Cong., 1st sess.; House Ex. Doc. No. 31, *ibid.*

"The revolution which recently occurred in Mexico was followed by the accession of the successful party to power and the installation of its chief, General Porfirio Diaz, in the Presidential office. It has been the custom of the United States, when such changes of Government have heretofore occurred in Mexico, to recognize and enter into official relations with the *de facto* Government as soon as it should appear to have the approval of the Mexican people, and should manifest a disposition to adhere to the obligations of treaties and international friendship. In the present case such official recognition has been deferred by the occurrences on the Rio Grande border, the records of which have been already communicated to each house of Congress, in answer to their respective resolutions of inquiry. Assurances have been received that the authorities at the seat of the Mexican Government have both the disposition and the power to prevent and punish such unlawful invasions and depredations. It is earnestly to be hoped that events may prove these assurances to be well founded. The best interests of both countries require the maintenance of peace upon the border, and the development of commerce between the two Republics. (See *infra*, § 70.)

"It is gratifying to add that this temporary interruption of official relations has not prevented due attention by the representatives of the United States in Mexico to the protection of American citizens, so far as practicable. Nor has it interfered with the prompt payment of the amounts due from Mexico to the United States under the treaty of July 4, 1868, and the awards of the joint commission. While I do not anticipate an interruption of friendly relations with Mexico, yet I cannot but look with some solicitude upon a continuance of border disorders as exposing the two countries to initiations of popular feeling and mischances of action which are naturally unfavorable to complete amity. Firmly determined that nothing shall be wanting on my part to promote a good understanding between the two nations, I yet must ask the attention of Congress to the actual occurrences on the border, that the lives and property of our citizens may be adequately protected and peace preserved."

President Hayes, First Annual Message, 1877.

"Since the resumption of diplomatic relations with Mexico, correspondence has been opened, and still continues, between the two Governments upon the various questions which at one time seemed to endanger their relations. While no formal agreement has been reached as to the troubles on the border, much has been done to repress and diminish them. The effective force of United States troops on the Rio Grande, by a strict and faithful compliance with instructions, has done much to remove the sources of dispute, and it is now understood that a like force of Mexican troops on the other side of the river is also making an energetic movement against the marauding Indian tribes. This Government looks with the greatest satisfaction upon every evidence of strength in the national authority of Mexico, and upon every effort put forth to prevent or to punish incursions upon our territory. Reluctant to assume any action or attitude in the control of these incursions, by military movements across the border, not imperatively demanded for the protection of the lives and property of our own citizens, I shall take the earliest opportunity, consistent with the proper discharge of this plain duty, to recognize the ability of the Mexican Government to restrain effectively violations of our territory. It is proposed to hold next year an international exhibition in Mexico, and it is believed that the display of the agricultural and manufacturing products of the two nations will tend to better understanding and increased commercial intercourse between their people."

President Hayes, Second Annual Message, 1878.

"As the relations between the Government of the United States and that of Mexico happily grow more amicable and intimate, it is but natural that a disposition should in like manner develop itself between the citizens of the respective countries to seek new means of fostering their material interests, and that the ties which spring from commercial interchange should tend to grow and strengthen with the growing and strengthening spirit of good-will which animates both peoples. That this spirit exists is one of the most evident proofs that the frank and conciliatory policy of the United States towards Mexico has borne and is bearing good fruit. It is especially visible in the rapidly extending desire on the part of the citizens of this country to take an active share in the prosecution of those industrial enterprises for which the magnificent resources of Mexico offer so broad and promising a field, and in the responsive and increasing disposition which is manifest on the part of the Mexican people to welcome such projects. No fact in the historical relations of the two great Republics of the northern continent is more fraught with happy promises for both, and it is a source of especial gratification to this Government that the jealousies and distrusts which have at times in the past clouded the perfect course of the mutual relations of the two Governments are thus yielding to the more wholesome spirit of reciprocal frankness and confidence.

"It seems to me proper at this time, when a new Administration has constitutionally and peacefully come into power in Mexico, devoted to fulfilling and extending the just policy of its predecessor, to call your attention to those general precepts which, in the judgment of the President, should govern the relations between the two Republics, and to bear testimony to which will be your most important duty as the diplomatic representative of the United States.

"The record of the last fifteen years must have removed from the minds of the enlightened statesmen of Mexico any possibly lingering doubt touching the policy of the United States toward her sister Republic. That policy is one of faithful and impartial recognition of the independence and the integrity of the Mexican nation. At this late day it needs no disclaimer on our part of the existence of even the faintest desire in the United States for territorial extension south of the Rio Grande. The boundaries of the two Republics have been long settled in conformity with the best jurisdictional interests of both. The line of demarkation is not conventional merely. It is more than that. It separates a Spanish-American people from a Saxon-American people. It divides one great nation from another with distinct and natural finality. The increasing prosperity of both commonwealths can only draw into closer union the friendly feeling, the political sympathy, and the correlated interests which their history and neighborhood have created and encouraged. In all your intercourse with the Mexican Government and people it must be your chiefest endeavor correctly to reflect this firm conviction of your Government.

"It has been the fortunate lot of this country that long years of peace and prosperity—of constant devotion to the arts and industries which make the true greatness of a nation—have given to the United States an abundance of skilled labor, a wealth of active and competent enterprise, and a large accumulation of capital, for which even its own vast resources fail to give full scope for the untiring energy of its citizens. It is but natural, therefore, that a part of this great store of national vitality should seek the channels which are offered by the wonderful and scarcely developed resources of Mexico, and that American enterprise and capital should tend to find their just employment in building up the internal prosperity of that Republic on like firm bases, and in opening new commercial relationship between the two countries.

"It is a source of profound gratification to the Government of the United States that the political condition of Mexico is so apparently and assuredly in the path of stability, and the administration of its constitutional Government so regular, that it can offer to foreign capital that just and certain protection without which the prospect even of extravagant profit will fail to tempt the extension of safe and enduring commercial and industrial enterprise. It is still more gratifying that with a full comprehension of the great political and social advantages of such a mode of developing the material resources of the country, the

Government of Mexico cordially lends its influence to the spirit of wel come and encouragement with which the Mexican people seem disposed to greet the importation of wealth and enterprise in their midst. Th progress now making in this direction by the National Government o Mexico is but an earnest of the great good which may be accomplished when the intimate and necessary relations of the two countries and peo ples are better understood than now. To conduce to this better under standing must be your constant labor. While, therefore, carefully avoiding all appearance of advocacy of any individual undertaking which citizens of the United States may desire to initiate in Mexico you will take every opportunity which you may deem judicious to make clear the spirit and motive which control this movement in the direction of developing Mexican resources, and will impress upon the Governmen of Mexico the earnest wish and hope felt by the people and Governmen of this country that these resources may be multiplied and rendered fruitful for the primary benefit of the Mexican people themselves; tha the forms of orderly, constitutional, and stable government may be strengthened as domestic wealth increases and as the conservative spirit of widely distributed and permanent vested interests is more and more felt; that the administration of the Mexican finances, fostered by these healthful tendencies, may be placed on a firm basis; that the rich sections of the great territory of the Republic may be brought into closer intercommunication; in a word, that Mexico may quickly and beneficially attain the place toward which she is so manifestly tending as one of the most powerful, well-ordered, and prosperous states in the harmonious system of western Republics.

"In future dispatches more detailed instructions will be given you touching certain points of interest to the two Governments in the direction of an enlarged reciprocal trade and interchange of commodities. It is my present design simply to acquaint you with the President's views and feeling toward Mexico and the spirit which will animate his policy."

Mr. Blaine, Sec. of State, to Mr. Morgan, June 1, 1881; MSS. Inst., Mex.; For. Rel., 1881.

"I had hardly completed my instruction to you of the 16th instant No. 138, when information reached me from the United States minister at the Guatemalan capital, placing in a still graver light the condition of the relations between Mexico and Guatemala, touching the possession of the territory of Soconusco. In fact, so serious is the apprehension caused in the mind of the President by these untoward reports, that I feel constrained to supplement my previous instructions to you on the subject with even more of energy and succinctness.

"It appears now as though the movement on the part of Mexico was not merely to obtain possession of the disputed territory, but to precipitate hostilities with Guatemala, with the ultimate view of extending

her borders by actual conquest. Large bodies of Mexican troops are said to be on their way to Soconusco, and the exigency is reported to be so alarming that plans for national defense are uppermost in the minds of President Barrios and his advisers. Frequent border raids into Guatemalan territory have inflamed the passions of the residents of the frontier country, and the imminence of a collision is very great. Of the possible consequence of war it may be premature to speak, but the information possessed by the Department intimates the probable extension of hostilities to the other Central American states and their eventual absorption into the Mexican federal system.

"I cannot believe it possible that these designs can seriously enter into the policy of the Mexican Government. Of late years the American movement toward fixity of boundaries and abstention from territorial enlargement has been so marked, and so necessarily a part of the continental policy of the American Republics, that any departure therefrom becomes necessarily a menace to the interests of all.

"This is a matter touching which the now established policy of the Government of the United States to refrain from territorial acquisition gives it the right to use its friendly offices in discouragement of any movement on the part of neighboring States which may tend to disturb the balance of power between them. More than this, the maintenance of this honorable attitude of example involves to a large extent a moral obligation on our part, as the strong but disinterested friend of all our sister states, to exert our influence for the preservation of the national life and integrity of any one of them against aggression, whether this may come from abroad or from another American Republic.

"No state in the American system has more unequivocally condemned the forcible extension of domain, at the expense of a weaker neighbor, than Mexico herself; and no state more heartily concurs in the condemnation of filibusterism in every form than the United States. It is clearly to the mutual interest of the two countries, to whose example the success of republican institutions on this continent is largely due, that their policy in this regard should be identical and unmistakable.

"As long as the broadened international diplomacy of our day affords peaceable recourse to principles of equity and justice in settlement of controversies like that between Mexico and Guatemala, the outbreak of a war between them would, in the judgment of the President, involve much farther-reaching results than the mere transitory disturbance of the *entente cordiale* so much desired by the United States Government between all the American Republics. Besides the transfers of territory which might follow as enforced compensation for the costs of a war, it is easy to foresee the serious complications and consequent dangers to the American system, should an opening be afforded to foreign powers to throw their influence or force into the scale in determination of the contest. Mexico herself has but too recently recovered from the effects of such a foreign constraint not to appreciate at its full force the con-

sideration thus presented. The peaceful maintenance of the *status quo* of the American commonwealths is of the very essence of their policy of harmonious alliance for self-preservation, and is of even more importance to Mexico than to the United States.

"I have adverted in my No. 138 to the desire of the United States that its neighbors should possess strong and prosperous Governments, to the assurance of their tranquillity from internal disturbance and outside interference. While we wish this happy result for Mexico, we equally wish it for the other Spanish-American nations. It is no less indispensable to the welfare of Central America than of Mexico, and, by moral influence and the interposition of good offices, it is the desire and the intention of the United States to hold up the Republics of Central America in their old strength and to do all that may be done toward insuring the tranquillity of their relations among themselves and their collective security as an association of allied interests, possessing in their common relationship to the outer world all of the elements of national existence. In this enlarged policy we confidently ask the cooperation of Mexico. A contrary course on her part would only be regarded as an unwise step, while any movement directly leading to the absorption, in whole or part, of her weaker neighbors would be deemed an act unfriendly to the best interests of America.

"It is desired that you should make earnest but calm representation of these views of the President to the Mexican minister of foreign affairs. In addition to embodying the main points of my previous instruction, No. 138, you will make use of such temperate reasoning as will serve to show Señor Mariscal that we expect every effort to be made by his Government to avert a conflict with Guatemala, by diplomatic means, or, these failing, by resort to arbitration. And you will especially intimate discreetly, but distinctly, that the good feeling between Mexico and the United States will be fortified by a frank avowal that the Mexican policy toward the neighboring states is not one of conquest or aggrandizement, but of conciliation, peace, and friendship.

"I have written this instruction rather to strengthen your own hands in the execution of the delicate and responsible duty thus confided to you than with a view to its formal communication to Señor Mariscal by reading and leaving a copy of it with him. If, in your discretion, the important ends in view will be subserved by your making the minister acquainted with portions hereof, you are at liberty to do so, while regarding the instruction as a whole in a confidential light, and as supplementary to my No. 138, which you have been authorized to communicate *in extenso*, if desirable."

Mr. Blaine, Sec. of State, to Mr. Morgan, June 21, 1881; MSS. Inst. Mex.; For. Rel., 1881.

"Referring to your correspondence with this Department since its instruction tendering the good offices of the Government of the United

States in aid of the amicable settlement of the differences between Mexico and Guatemala, I have to remark that it would be a matter of the gravest disappointment if I found myself compelled to agree with you in the conclusion which you seem to have reached in your last dispatch.

"Reporting in your No. 273, of September 22, 1881, your most recent conversation with Señor Mariscal, the Mexican secretary for foreign affairs, you say:

"'I venture to suggest that, unless the Government is prepared to announce to the Mexican Government that it will actively, if necessary, preserve the peace, it would be the part of wisdom on our side to leave the matter where it is. Negotiations on the subject will not benefit Guatemala, and you may depend upon it what we have already done in this direction has not tended to the increasing of the cordial relations which I know it is so much your desire to cultivate with this nation.'

"'To leave the matter where it is,' you must perceive, is simply impossible, for it will not remain there. The friendly relations of the United States and Mexico would certainly not be promoted by the refusal of the good offices of this Government, tendered in a spirit of the most cordial regard both for the interests and honor of Mexico, and suggested only by the earnest desire to prevent a war useless in its purpose, deplorable in its means, and dangerous to the best interests of all the Central American Republics in its consequences. To put aside such an amicable intervention as an unfriendly intrusion, or to treat it as I regret to see the Mexican secretary for foreign affairs seems disposed, as a partisan manifestation on behalf of claims which we have not examined and interests which we totally misunderstand, can certainly not contribute 'to the increasing of the cordial relations which you know it is so much our desire to cultivate with Mexico.'

"But, more than this, 'to leave the matter where it is' is to leave Mexico and Guatemala confronting each other in armed hostility, with the certainty that irritation and anger on the one side and extreme apprehension on the other will develop some untoward incident leading to actual collision. In such event no successfull resistance can be anticipated on the part of Guatemala. Whether the claims of Mexico be moderate or extravagant, whether the cession of territory be confined to the present alleged boundary lines or be extended to meet the necessities of a war indemnity, there would be another lamentable demonstration on this continent of the so-called right of conquest, the general disturbance of the friendly relations of the American Republics, and the postponement for an indefinite period of that sympathy of feeling, that community of purpose, and that unity of interest, upon the development of which depends the future prosperity of these countries.

"The Republic of Guatemala, one of those American Republics in whose fortunes the United States naturally feel a friendly interest, com-

municated to this Government that there exisited between it and Mexico certain differences which, after much diplomatic consultation, had failed to reach a satisfactory settlement. Recognizing the relation of the United States to all the Republics of this continent, aware of the friendly services which this Government has never failed to render to Mexico, and presuming not unnaturally that Mexico would receive our amicable counsel with cordiality and confidence, the Government of Guatemala asked our good offices with that power for the purpose of inducing it to submit to an impartial arbitration those differences upon which they had been unable to agree.

"To refuse such a request would not only have been a violation of international courtesy to Guatemala, but an indication of a want of confidence in the purposes and character of the Mexican Government which we could not and did not entertain.

"In tendering our good offices, the Mexican Government was distinctly informed that the United States 'is not a self-constituted arbitrator of the destinies of either country or of both in this matter. It is simply the impartial friend of both, ready to tender frank and earnest counsel touching anything which may menace the peace and prosperity of its neighbors.'

"Before this instruction could have reached you, information was received that large bodies of Mexican troops had been ordered to the frontier in dispute. You were therefore directed to urge upon the Mexican Government the propriety of abstaining from all such hostile demonstration in order to afford opportunity for the friendly solution of the differences between the two Governments. It is unnecessary now to repeat the reasons which you were instructed to submit to the consideration of the Mexican Government, and which were stated in the most earnest and friendly spirit, and which were communicated by you to the Mexican secretary for foreign affairs with entire fidelity.

"I now learn from your dispatches that our information was correct; that Mexican troops have been ordered to the disputed boundary line, and that, while the Mexican Government does not absolutely reject a possible future arbitration, it is unwilling to postpone its own action to further discussion, and does not receive the good offices of this Government in the spirit in which they have been tendered. The United States does not pretend to direct the policy of Mexico, nor has it made any pretension to decide in advance upon the merits of the controversy between Mexico and Guatemala. The Mexican Government is of course free to decline our counsel, however friendly. But it is necessary that we should know distinctly what the Mexican Government has decided. It is useless, and from your dispatches I infer it would be irritating, to keep before the Government of Mexico the offer of friendly intervention, while, on the other hand, it would not be just to Guatemala to hold the Government in suspense as to whether there was a possibility of the acceptance of the amicable mediation which we have offered.

"You will, therefore, upon the receipt of this instruction, ask for an interview with the secretary for foreign affairs. You will press upon his reconsideration the views which you have already submitted to him; assure him of the earnestness with which this Government desires a peaceful solution of the existing differences, and inform him of our profound regret and disappointment that the tender of our good offices has not been received in the spirit in which it was made. * * * In reference to the union of the Central American Republics, under one federal government, the United States is ready to avow that no subject appeals more strongly to its sympathy, nor more decidedly to its judgment. Nor is this a new policy. For many years this Government has urged upon the Central American States the importance of such an union to the creation of a well-ordered and constitutionally governed Republic, and our ministers have been instructed to impress this upon the individual Governments to which they have been accredited, and to the Central American statesmen with whom they have been associated. And we have always cherished the belief that in this effort we had the sincere sympathy and cordial co-operation of the Mexican Government. Under the conviction that the future of the people of Central America was absolutely dependent upon the establishment of a federal government which would give strength abroad and maintain peace at home, our chief motive in the recent communications to Mexico was to prevent the diminution, either political or territorial, of any one of these States, or the disturbance of their exterior relations, in order that, trusting to the joint aid and friendship of Mexico and the United States, they might be encouraged to persist in their effort to establish a government which would, both for their advantage and ours, represent their combined wealth, intelligence, and character.

"If this Government is expected to infer from the language of Señor Mariscal that the prospect of such a result is not agreeable to the policy of Mexico, and that the interest which the United States have always manifested in its consummation renders unwelcome the friendly intervention which we have offered, I can only say that it deepens the regret with which we will learn the decision of the Mexican Government, and compels me to declare that the Government of the United States will consider a hostile demonstration against Guatemala for the avowed purpose, or with the certain result of weakening her power in such an effort, as an act not in consonance with the position and character of Mexico, not in harmony with the friendly relations existing between us, and injurious to the best interests of all the Republics of this continent.

"The Government of the United States has the sincerest sympathy and the profoundest interest in the prosperity of the Spanish Republics of America, and is influenced by no selfish considerations in its earnest efforts to prevent war between them. This country will continue its

policy of peace even if it cannot have the great aid which the co-operation of Mexico would assure; and it will hope, at no distant day, to see such concord and co-operation between all the nations of America as will render war impossible."

Mr. Blaine, Sec. of State, to Mr. Morgan, Nov. 28, 1881; MSS. Inst., Mex.; For. Rel., 1881.

As to mediation in wars in which Mexico was a belligerent, see *supra*, § 49.

As to recognition of changes of Government in Mexico, see *infra*, § 70.

As to a temporary protectorate by the United States over the northern portions of Chihuahua and Sonora, see President Buchanan's message of 1858, quoted *supra*, § 50*e*.

As to claims against Mexico, see *infra*, § 223.

The following references to documents relative to Mexico are taken from the list of papers concerning foreign relations attached to the register of the Department of State:

Commercial intercourse with. Not deemed advisable to communicate correspondence on the subject of its extension. President's message. July 19, 1876. (H. Ex. Doc. 185, Forty-fourth Congress, first session.)

Relations with. Historical review. Texas border troubles and extradition report. Committee on Foreign Affairs. April 25, 1878. (H. Rep. 701, Forty-fifth Congress, second session.)

Resolutions touching the relations with. May 8, 1878. (S. Mis. Doc. 63, Forty-fifth Congress, second session.)

Commercial relations with. President's message. January 7, 1879. (H. Ex. Doc. 15, Forty-fifth Congress, third session.)

Commercial treaty with. Report favoring the negotiation of such treaties. February 13, 1879. (H. Rep. 108, Forty-fifth Congress, third session.)

Railroads in. Concessions granted by Mexico for. President's message. February 28, 1879. (S. Ex. Doc. 73, Forty-fifth Congress, third session.)

Austin-Topolovampo Railroad survey across Mexico. President's message. July 1, 1879 (S. Ex. Doc. 38, Forty-sixth Congress, first session), stating that the Department of State has no information.

Protection of the Rio Grande frontier. Report of Committee on Military Affairs favoring the erection of suitable posts on the frontier for that purpose. December 9, 1879. (S. Rep. 40, Forty-sixth Congress, second session.)

Protection of the Rio Grande frontier. Report of Committee on Military Affairs favoring the erection of suitable posts on the frontier for that purpose. January 14, 1880. (H. Rep. 88, Forty-sixth Congress, second session.)

Seizure and detention of the Montana by the customs authorities at Mazatlan. Claim of Max Bromberger. President's message. February 27, 1880. (S. Ex. Doc. 96, Forty-sixth Congress, second session.)

Amendment to the resolution thanking Mexican Government and people for courtesies extended to American merchants who recently visited that country. April 8, 1880. (H. Rep. 1015, Forty-sixth Congress, second session.) p. 1.

Resolution asking whether the United States have objected to Mexico bringing suit in United States courts *vs.* American citizens. February 8, 1881. (S. Mis. Doc. 33, Forty-sixth Congress, third session.)

Proposed reciprocity treaty with. February 6, 1882. (S. Mis. Doc. 45. Forty-seventh Congress, first session.)

Relations between Guatemala and the United States—the boundary question. President's message. February 17, 1882. (S. Ex. Doc. 156, Forty-seventh Congress, first session.)

Commercial treaty with. President's message retransmitting the same, as amended by insertion of the word "steel" in item (35) 66 of the list appended to article 2. February 6, 1883. (S. Ex. Doc. 75, Forty-seventh Congress, second session.) Report recommending that it be carried into operation. With map. June 17, 1884. (H. Rep. 1848, Forty-eighth Congress, first session.)

Amendment to pending treaty asked. Memorial of Trinidad and San José Silver Mining Company. January 16, 1883. (S. Mis. Doc. 23, Forty-seventh Congress, second session.)

Trade between the United States and, and traffic over railroads connecting the two countries. Letter from the Secretary of the Treasury. With map. February 8, 1884. (H. Ex. Doc. 86, Forty-eighth Congress, first session.)

Boundary between Guatemala and. President's message, transmitting report of the Secretary of State. May 6, 1884. (H. Ex. Doc. 154, Forty-eighth Congress, first session.)

Boundary line between the United States and. President's message, transmitting letter from the Secretary of State recommending an appropriation for relocating monuments marking. May 14, 1884. (H. Ex. Doc. 158, Forty-eighth Congress, first session.)

Boundary line between the United States and. Report of Lieut. Thomas W. Symons concerning a preliminary reconnoissance of. May 26, 1884. (S. Mis. Doc. 96, Forty-eighth Congress, first session.)

Latest law of, creating or modifying the Zona Libre. President's message transmitting report of the Secretary of State. June 12, 1884. (S. Ex. Doc. 185, Forty-eighth Congfess, first session.)

(2) PERU.

§ 59.

"The deplorable condition of Peru, the disorganization of its Government, and the absence of precise and trustworthy information as to the state of affairs now existing in that unhappy country, render it impossible to give you instructions as full and definite as I would desire.

"Judging from the most recent dispatches from our ministers, you will probably find on the part of the Chilian authorities in possession of Peru a willingness to facilitate the establishment of the provisional Government which has been attempted by Señor Calderon. If so, you will do all you properly can to encourage the Peruvians to accept any reasonable conditions and limitations with which this concession may be accompanied. It is vitally important to Peru that she be allowed to resume the functions of a native and orderly Government, both for the purposes of internal administration and the negotiation of peace. To obtain this end it would be far better to accept conditions which may be hard and unwelcome than by demanding too much to force the continuance of the military control of Chili. It is hoped that you will be able, in your necessary association with the Chilian authorities, to impress upon them that the more liberal and considerate their policy,

the surer it will be to obtain a lasting and satisfactory settlement. Th Peruvians cannot but be aware of the sympathy and interest of th people and Government of the United States, and will, I feel confident be prepared to give to your representations the consideration to whic the friendly anxiety of this Government entitles them.

"The United States cannot refuse to recognize the rights which th Chilian Government has acquired by the successes of the war, and i may be that a cession of territory will be the necessary price to be pai for peace. It would seem to be injudicious for Peru to declare tha under no circumstances could the loss of territory be accepted as th result of negotiation. The great objects of the provisional authoritie of Peru would seem to be to secure the establishment of a constitu tional Government, and next to succeed in the opening of negotiation for peace without the declaration of preliminary conditions as an *ulti matum* on either side. It will be difficult, perhaps, to obtain this fron Chili; but as the Chilian Government has distinctly repudiated th idea that this was a war of conquest, the Government of Peru ma fairly claim the opportunity to make propositions of indemnity and guarantee before submitting to a cession of territory. As far as the influence of the United States will go in Chili, it will be exerted to in duce the Chilian Government to consent that the question of the ces sion of territory should be the subject of negotiation and not the con dition precedent upon which alone negotiation shall commence. If you can aid the Government of Peru in securing such a result, you wil have rendered the service which seems most pressing. Whether it i in the power of the Peruvian Government to make any arrangement at home or abroad, singly or with the assistance of friendly powers which will furnish the necessary indemnity or supply the required guar antee, you will be better able to advise me after you have reached you post.

"As you are aware, more than one proposition has been submitted t the consideration of this Government looking to a friendly intervention by which Peru might be enabled to meet the conditions which would probably be imposed. Circumstances do not seem at present opportune for such action; but if, upon full knowledge of the condition of Peru you can inform this Government that Peru can devise and carry into practical effect a plan by which all the reasonable conditions of Chil can be met without sacrificing the integrity of Peruvian territory, the Government of the United States would be willing to offer its good of fices toward the execution of such a project.

"As a strictly confidential communication, I inclose you a copy o instructions sent this day to the United States minister at Santiago You will thus be advised of the position which this Government as sumes toward all the parties to this deplorable conflict. It is the d sire of the United States to act in a spirit of the sincerest friendsh

to the three Republics, and to use its influence solely in the interest of an honorable and lasting peace."

Mr. Blaine, Sec. of State, to Mr. Hurlbut, June 15, 1881; MSS. Inst., Peru; For. Rel., 1881.

"Your dispatches to No. 23, inclusive, have been received, and I learn with regret that a construction has been put upon your language and conduct indicating a policy of active intervention on the part of this Government, beyond the scope of your instructions. As those instructions were clear and explicit, and as this Department is in the possession of no information which would seem to require the withdrawal of the confidence reposed in you, I must consider this interpretation of your words and acts as the result of some strange and perhaps prejudiced misconception.

"My only material for forming an opinion consists of your memorandum to Admiral Lynch, your letter to Señor Garcia, the secretary of General Piérola, and the convention with President Calderon, ceding a naval station to the United States. I would have preferred that you should hold no communication with Admiral Lynch on questions of a diplomatic character. He was present as a military commander of Chilian forces, and you were accredited to Peru. Nor do I conceive that Admiral Lynch, as the commander of the Chilian army of occupation, had any right to ask or receive any formal assurance from you as to the opinions of your Government. The United States was represented in Chili by a properly accredited minister, and from his own Government the admiral could and ought to have received any information which it was important for him to have. It was to be expected, and even desired, that frank and friendly relations should exist between you, but I cannot consider such confidential communication as justifying a formal appeal to your colleague in Chili, for the correction or criticism of your conduct. If there was anything in your proceedings in Peru to which the Government of Chili could properly take exception, a direct representation to this Government, through the Chilian minister here, was due, both to the Government and to yourself.

"Having said this, I must add that the language of the memorandum was capable of not unnatural construction. While you said nothing that may not fairly be considered warranted by your instructions, you omitted to say with equal emphasis some things which your instructions supplied, and which would perhaps have relieved the sensitive apprehensions of the Chilian authorities. For, while the United States would unquestionably "regard with disfavor" the imperious annexation of Peruvian territory as the right of conquest, you were distinctly informed that this Government could not refuse to recognize that such annexation might become a necessary condition in a final treaty of peace. And the main purpose of your effort was expected to be, not so much a protest against any possible annexation, as an attempt by

friendly but unofficial communications with the Chilian authorities (with whom you were daily associated), to induce them to support the policy of giving to Peru, without the imposition of harsh and absolute conditions precedent, the opportunity to show that the rights and interests of Chili could be satisfied without such annexation. There is enough in your memorandum, if carefully considered, to indicate this purpose, and I only regret that you did not state it with a distinctness, and if necessary with a repetition, which would have made impossible anything but the most willful misconception.

"As at present advised I must express disapproval of your letter to Señor Garcia, the secretary of General Piérola. I think that your proper course in reference to Garcia's communication would have been either entirely to ignore it as claiming an official character which you could not recognize, or, if you deemed that courtesy required a reply, to state that you were accredited to the Calderon government, and could, therefore, know no other, and that any communication which General Piérola thought it his duty or interest to make must be made directly to the Government at Washington. You had no responsibility in the matter, and it was injudicious to assume any. The recognition of the Calderon government had been duly considered and decided by your own Government, and you were neither instructed nor expected to furnish General Piérola or the Peruvian public with the reasons for that action. The following language in your letter to Señor Garcia might well be misunderstood:

"'Chili desires, and asks for Tarapacá, and will recognize the Government which agrees to its cession. The Calderon government will not cede it. It remains to be seen whether that of Piérola will prove more pliable.'"

"It might easily be supposed, by an excited public opinion on either side, that such language was intended to imply that the Government of the United States had recognized the government of Calderon because of its resolution not to cede Peruvian territory. No such motive has ever been declared by this Government. The government of Calderon was recognized because we believed it to the interest of both Chili and Peru that some respectable authority should be established which could restore internal order, and initiate responsible negotiations for peace. We desired that the Peruvian Government should have a fair opportunity to obtain the best terms it could, and hoped that it would be able to satisfy the just demands of Chili without the painful sacrifice of the national territory. But we did not make, and never intended to make, any special result of the peace negotiations the basis of our recognition of the Calderon government. What was best, and what was possible for Peru to do, we are anxious to the extent of our power to aid her in doing, by the use of whatever influence or consideration we enjoyed with Chili. Further than that, the Government of the United States, as yet, expressed neither opinion nor intention.

"I must also express the dissatisfaction of the Department at your telegram to the minister of the United States near the Argentine Confederation, suggesting that a minister be sent by that Government to Peru.

"This would have been clearly without the sphere of your proper official action at any time, but as there then existed a serious difference between Chili and the Argentine Confederation, you might naturally have anticipated that such a recommendation would be considered by Chili as an effort to effect a political combination against her. The United States was not in search of alliances to support a hostile demonstration against Chili, and such an anxiety might well be deemed inconsistent with the professions of an impartial mediation.

"As to the convention with regard to a naval station in the bay of Chimbote, I am of the opinion that, although it is a desirable arrangement, the time is not opportune. I would be very unwilling to ask such a concession under circumstances which would almost seem to impose upon Peru the necessity of compliance with our request, and I have no doubt that whenever Peru is relieved from present embarrassments she would cheerfully grant any facilities which our naval or commercial interests might require. Nor in the present excited condition of public opinion in Chili would I be willing to afford to evil-disposed persons the opportunity to intimate that the United States contemplated the establishment of a naval rendezvous in the neighborhood of either Peru or Chili. The very natural and innocent convenience which we require might be misunderstood or misrepresented, and as our sole purpose is to be allowed, in a spirit of the most impartial friendship, to act as mediator between these two powers, I would prefer at present to ask no favors of the one and to excite no possible apprehension in the other.

"Having thus stated with frankness the impression made upon the Department by such information as you have furnished it, it becomes my duty to add that this Government is unable to understand the abolition of the Calderon government and the arrest of President Calderon himself by the Chilian authorities, or I suppose I ought to say by the Chilian Government, as the secretary for foreign affairs of that Government has in a formal communication to Mr. Kilpatrick declared that the Calderon government "was at an end." As we recognized that government in supposed conformity with the wishes of Chili, and as no reason for its destruction has been given us, you will still consider yourself accredited to it, if any legitimate representative exists in the place of President Calderon. If none such exists, you will remain in Lima until you receive further instructions, confining your communications with the Chilian authorities to such limits as your personal convenience and the maintenance of the rights and privileges of your legation may require.

"The complicated condition of affairs resulting from the action of the Chilian Government, the time required for communication between the

legations in Chili and Peru and this Department, and the unfortunate notoriety which the serious differences between yourself and your colleague in Chili have attracted have, in the opinion of the President, imposed upon him the necessity of a special mission. This mission will be charged with the duty of expressing the views of the President upon the grave condition of affairs which your dispatches describe, and, if possible, with due consideration of the rights, interests, and susceptibilities of both nations to promote a settlement which shall restore to the suffering people of Peru the benefits of a well-ordered Government, deliver both countries from the miseries and burdens of a protracted war, and place their future relations upon a foundation that will prove stable, because just and honorable."

Mr. Blaine, Sec. of State, to Mr. Hurlbut, Nov. 22, 1881; MSS. Inst., Peru; For. Rel., 1881.

"The United States, with which Peru has for many years maintained the most cordial relations, has the right to feel and express a deep interest in its distressed condition, and while, with equal friendliness to Chili, we will not interpose to deprive her of the fair advantages of military success, nor put any obstacle to the attainment of future security, we cannot regard with unconcern the destruction of Peruvian nationality. If our good offices are rejected, and this policy of the absorption of an independent state be persisted in, this Government will consider itself discharged from any further obligation to be influenced in its action by the position which Chili has assumed, and would hold itself free to appeal to the other Republics of this continent to join in an effort to avert consequences which cannot be confined to Chili and Peru, but which threaten with extremest danger the political institutions, the peaceful progress, and the liberal civilization of all America."

Mr. Blaine, Sec. of State, to Mr. Trescot, Dec. 1, 1881; MSS. Inst., Chili.

"Were the United States to assume an attitude of dictation toward the South American Republics, even for the purpose of preventing war, the greatest of evils, or to preserve the autonomy of nations, it must be prepared by Army and Navy to enforce its mandate, and, to this end, tax our people for the exclusive benefit of foreign nations.

"The President's policy with the South American Republics and other foreign nations is that expressed in the immortal address of Washington, with which you are entirely familiar. What the President does seek to do is to extend the kindly offices of the United States impartially to both Peru and Chili, whose hostile attitude to each other he seriously laments; and he considers himself fortunate in having one so competent as yourself to bring the power of reason and persuasion to bear in seeking the termination of the unhappy controversy. And you will consider as revoked that portion of your original instruction which directs you, on the contingency therein stated, as follows:

"'You will say to the Chilian Government that the President c[illegible]

siders such a proceeding as an intentional and unwarranted offense, and that you will communicate such an avowal to the Government of the United States, with the assurance that it will be regarded by the Government as an act of such unfriendly import as to require the immediate suspension of all diplomatic intercourse. You will inform me immediately of the happening of such a contingency, and instructions will be sent to you.'

"Believing that a prolific cause of contention between nations is an irritability which is too readily offended, the President prefers that he shall himself determine, after report has been made to him, whether there is or is not cause for offense."

Mr. Frelinghuysen, Sec. of State, to Mr. Trescot, Jan. 9, 1882; MSS. Inst., Chili.

"On the other hand he remains convinced that the United States has no right which is conferred either by treaty stipulations or by public law to impose upon the belligerents, unasked, its views of a just settlement, and it has no interests at stake commensurate with the evils that might follow an interference, which would authorize it to interpose between these parties, further than warranted by treaties, by public law, or by the voluntary acts of both parties."

Mr. Frelinghuysen, Sec. of State, to Mr. Trescot, Feb. 24, 1882; MSS. Inst., Chili.

"The study which you have made of the correspondence between this Department and the legations of the United States in Chili, Peru, and Bolivia renders unnecessary a detailed statement of the protracted negotiations seeking to establish peace between those Republics.

"The general policy of the United States in regard to the conflict between these states is set forth in instructions No. 2, of December 1, 1881, to Mr. Trescot; No. 2, of March 18, 1882, and No. 41, of March 23, 1883, to Mr. Logan, and No. 5, of June 26, 1882, to Mr. Partridge, and also in the message of the President to Congress, transmitted to that body in December last.

"The representatives of this Government, as you have seen from these instructions, were directed harmoniously to join in a courteous and friendly effort to aid the belligerent powers in reaching an agreement for peace, which, while securing to Chili the legitimate results of success, should at the same time not be unduly severe upon Peru and Bolivia.

"Mr. Logan, who was accredited to Chili, has for some nine months energetically sought for a satisfactory basis of settlement, but thus far without that success which it was hoped before this time might have been attained. Nevertheless it is believed that his efforts have aided in bringing the parties nearer to an agreement.

"Mr. Logan was instructed in my No. 41, of March 23, 1883, that he should suggest the following bases for a treaty of peace to the Chilian Government, viz: The cession to Chili of the Peruvian territory of Tara

pacá, and the submission to impartial arbitration of the question whether any additional territory should be ceded, and, if so, how much and on what terms. When this instruction reached Santiago another phase of this question had presented itself in the substantial agreement by Chili with General Iglesias, who had been put forward as the representative of Peru. The full text of this agreement has not been received at the Department, but it is understood that in substance it concedes to Chili the province of Tarapacá, with the occupation for ten years of the province of Tacna and Arica, at the end of which time a plebiscite is to be taken to decide to which of the parties the provinces shall thenceforward belong, the successful power to pay to the other the sum of ten millions of dollars. The other provisions, as to guano and the Peruvian debt, are not yet definitely known.

"It will be seen that these terms are more severe upon Peru than those which Chili had before been willing to accord. It was after Señor Calderon declined the terms of settlement offered by Chili through Mr. Logan's mediation that Chili turned to General Iglesias, and, through a representative sent by him, submitted the terms of settlement hereinbefore stated, and which terms have by this time received the signature of General Iglesias.

"It is not the province of this Government to adjudge who is or who is not *de jure* the representative of the executive or sovereign power of any nation. International intercourse imposes upon it often the necessity of recognizing some one as at least *de facto* such representative.

"Upon the flight of Piérola the Government of Señor Calderon was recognized by the United States as the *de facto* Government of Peru, springing up necessarily from the state of affairs then existing, and having apparently the support of the majority of the citizens of Peru. Soon after its recognition Señor Calderon was transported to Chili as a prisoner, and since that time has not been in the territory of his native country. Señor Montero, meantime the vice-president, has at various points in the country, and now for some time at Arequipa, represented in Peru the authority of that Government of which he is the second in rank.

"It is now claimed that the Government of Calderon-Montero has lost the attributes of a *de facto* government, and it is urged that, not having the support of the people, it is no longer entitled to recognition. The information furnished this Department on the subject, however, is most conflicting, and is naturally colored by the sentiments of the different observers. On the one hand it is said that General Iglesias is supported by fully five-sixths of the population of Peru, that the provinces of the north and center are solidly united in his aid and in approval of his plan of settlement, while on the other hand, we are told that Calderon was never so strong as at present, that his own moral influence and the physical force of his followers are impregnable in Arequipa, and that a majority of his countrymen support and approve his course. It is

evident that no peace can be made unless Peru is represented in its negotiation by some one having the support of his fellow-countrymen and whose action will meet with their approval.

"In Señor Calderon this Government understood that it recognized such a ruler. As at present advised, it would not hastily withdraw or transfer that recognition. Should the facts be as alleged by the friends of General Iglesias, this Government will not, by adhering to the recognition of Señor Calderon, impede the advance toward an amicable adjustment of the difficulty.

"Your first and most delicate duty, therefore, will be, by rendering yourself familiar with the condition, politics, and affairs of Peru, and consulting, if practicable, with your colleagues the ministers to Chili and Bolivia, to report fully to this Department whom it is wise and proper that this Government, having in view the peace and prosperity of the three contending Republics, should recognize as the executive representative of the sovereignty of Peru.

"The confidence which this Department places in your discretion and good judgment and that of your colleagues will render your report on this delicate question influential with this Government in its determination; and should the opinion of the ministers to Chili, Peru, and Bolivia be in harmony, such opinion would be well-nigh conclusive.

"As soon as you reach a decision satisfactory to yourself you will report the result without delay to this Government, using, if necessary, the telegraph freely for this purpose; and if in your judgment it becomes important, you may, without in any manner committing yourself as to your final conclusions, report by telegraph the progress of your investigations and their indications.

"While greater stress has been given in the instructions of this Department to the relations of Peru and Chili, it must not be assumed that the rights and wishes of Bolivia, a sovereign power and a party to the contest, with rights equal to the other contestants, are to be neglected. It is not supposed that any agreement will be made, nor in fact can any agreement be reached, which shall not receive the assent of that power in all that concerns its interests. As this Government has recognized the equal sovereignty of the three Republics, and will not depart from that position, of course any agreement, so far as it affects the rights of Bolivia, must receive the consent of that power.

"Until Chili and Peru had reached a point where a fair prospect of agreement was seen, it seemed unnecessary to negotiate at La Paz, particularly as Señor Calderon, it was properly assumed, would not act against the interests of his ally. For these reasons the tentative discussions were carried on at Santiago.

"I simply add that it is not for this Government to dictate to sovereign belligerent powers the terms of peace to be accepted by them, nor is it the right or duty of the United States in the premises to do more than to aid by their unprejudiced counsels, their freindly mediation, and

their moral support the obtainment of peace—the much-desired end. If such an end can be reached in a manner satisfactory to all parties more speedily through negotiations with Peruvian authority other than that heretofore recognized by this Government as the *de facto* ruler of Peru, this Government will not, through any spirit of pride or pique, stand in the way of the hoped-for result."

Mr. Frelinghuysen, Sec. of State, to Mr. Phelps, July 26, 1883; MSS. Inst., Peru For. Rel., 1883.

"I transmit herewith for your information a copy of a dispatch from Mr. Logan, communicating the text of the protocol signed between General Iglesias and the Chilian general, Norva, leading to a definitive treaty of peace.

"An examination of the terms of the protocol shows that the foreign debt of Peru is guaranteed only to a limited extent by a portion only of the guano product, the overplus, as well as all future discoveries of guano, to go to Chili.

"This Government does not undertake to speak for any other than the lawful interests of American citizens which may be involved in this settlement, but as to them it must be frankly declared and unmistakably understood that the United States could not look with favor upon any eventual settlement which may disregard such interests.

"It may be difficult for you, in concert with your colleagues, to advocate any determinate solution of the embarrassing questions relating to the other foreign debt of Peru, since this Government cannot undertake to advocate the interests of any class of bondholders or other legitimate creditors of Peru without exercising a like watchful consideration for the interests of all. It seems, however, to be essential to a just and lasting peace either that Peru should be left in a condition to meet obligations toward other Governments which were recognized prior to the war or which may be legitimately established, or that if Chili appropriates the natural resources of Peru as compensation for the expenses of the war she should recognize the obligations which rest upon those resources, and take the property with a fair determination to meet all just incumbrances which rest upon it.

"The President would see with regret any insistance by Chili upon a policy which would impose upon Peru heavier burdens than she has been disposed to impose during the past negotiations.

"Better terms, if offered, would be appreciated by him as a friendly recognition of the earnestness which this Government has shown in endeavoring to bring about an honorable and equitable end to the painful strife."

Mr. Frelinghuysen, Sec. of State, to Mr. Phelps, Aug. 25, 1883; MSS. Inst. Peru; For. Rel., 1883.

"Your several dispatches, so far as received to date, reporting the military and political situation in Peru, have been considered with the

attention demanded by the importance of the occurrences you narrate. As supplemented by your later telegrams, they show the conclusion of a treaty of peace between General Iglesias and the Chilian plenipotentiary, on what are understood here to be bases substantially in accord with the terms of the protocol previously signed between General Iglesias and the representative of Chili; the evacuation of Lima by the Chilian forces; the installation there of a form of provisional administration under the Presidency of General Iglesias; and the revolt of the residents or garrison of Arequipa against the authority of Vice-President Montero, who thereupon escaped by flight. Besides this, it appears that the first public act of General Iglesias on assuming control of the provisional Government thus established, was to issue a convocation for an assembly of delegates, to be chosen by the people of Peru, to whom is to be referred the question of accepting and ratifying the treaty which has been signed, and who are further to decide the Presidency of the Peruvian Government.

"Of the terms of the treaty itself I cannot at present speak. You are already acquainted with the views of this Government upon the main point involved. It remains to be seen whether the people of Peru, in the expression of their national sovereignty, are disposed to accept the terms proposed to them. With this the Government of the United States has no desire to interfere. It respects the independence of Peru as a commonwealth entitled to settle its own affairs in its own way. It recognizes too keenly the calamities of protracted strife, or the alternative calamity of prolonged military occupation by an enemy's forces, to seek, by anything it may say or do, to influence an adverse decision of the popular representatives of Peru. And a due respect for their sovereign independence forbids the United States from seeming to exert any positive or indirect pressure upon these representatives to influence their course.

"The state of facts reported by you makes it necessary to give you instructions respecting your relations with the provisional Government. With the people of Peru this country aims, as it has always aimed, to maintain relations of friendship and sympathy. With the particular Administration which may for the time assume to control the affairs of Peru we have little direct concern, except so far as our attitude towards it shall express our friendliness to the nation; hence we have no partiality for the Calderon-Montero government or desire that you should manifest any. Should the assembly which is about to convene be elected under circumstances entitling it to represent the people of Peru and declare for General Iglesias, this Government would no doubt recognize him. This, however, it is unnecessary to say, as such an announcement in advance of the action of the assembly might in effect exert an influence upon its deliberations, which we seek to avoid.

"In the mean time, however, your attitude towards whatever Administration may have actual control of the public affairs of Peru should be unconstrained, although informal, and of a character to impress them with a sense of the good-will we bear to the Peruvian people."

Mr. Frelinghuysen, Sec. of State, to Mr. Phelps, Nov. 15, 1883; MSS. Inst., Peru; For. Rel., 1883.

"The opinion of the United States heretofore has been, that as the foreign obligations of Peru, incurred in good faith before the war, rested upon and were secured by the products of her guano deposits, Chili was under a moral obligation not to appropriate that security without recognizing the lien existing thereon. This opinion was frankly made known to Chili, and our belief was expressed that no arrangement would be made between the two countries by which the ability of Peru to meet her honest engagements towards foreigners would be impaired by the direct act of Chili. This Government went so far as to announce that it could not be a party, as mediator, or directly lend its sanction to any arrangement which should impair the power of Peru to pay those debts."

Mr. Frelinghuysen, Sec. of State, to Mr. Phelps, Dec. 29, 1883; MSS. Inst., Peru.

"Your energy in seeking to reach some conclusion is appreciated, but for this Government to direct you to tell Peru that it should surrender Tarapacá, Tacna, and Arica, on receiving $10,000,000, would be assuming to decide a question between two nations when we have not been requested to arbitrate, and it would be telling Chili it might properly make claim for the territory. Peru's condition may be so deplorable that it is wise for her to accept these terms, but Peru and not the United States as to this must decide."

Mr. Frelinghuysen, Sec. of State, to Mr. Logan, Jan. 5, 1885; MSS. Inst., Chili.

The following Congressional documents, as noted in the list of papers concerning foreign relations attached to the register of the Department of State, may be referred to in this relation:

Chilian and Peru-Bolivian war. Efforts of the United States to bring about a peace. President's message. January 20, 1881. (S. Ex. Doc. 26, Forty-sixth Congress, third session.)

Papers relating to, and attempts to bring about a peace, and touching claims or contracts respecting either of the belligerent Governments; a diplomatic history of the war. President's message. January 26, 1882. (S. Ex. Doc. 79, Forty-seventh Congress, first session.) Refers to the foregoing documents for the correspondence. President's message. January 26, 1882. (H. Ex. Doc. 68, Forty-seventh Congress, first session.)

Telegram from Mr. Trescot, setting forth the conditions of peace presented by Chili. President's message. January 27, 1882. (S. Ex. Doc. 79, part 2, Forty-seventh Congress, first session.)

Further correspondence, not incorporated in H. Ex. Doc. 68, comprising letters of Messrs. Shipherd, Christiancy, and Hurlbut. President's message. February 17, 1882. (H. Ex. Doc. 68, part 2, Forty-seventh Congress, first session.)

Peace congress to convene at Washington to agree on some just method of settlement of all questions now existing or that shall hereafter arise between Chili, Peru, and Bolivia. Resolution favoring such congress. February 20, 1882. (S. Mis. Doc. 53, Forty-seventh Congress, first session.)

Alleged contracts for exporting guano, investigation as to connection of United States officials with. February 24, 1882. (S. Mis. Doc. 55, Forty-seventh Congress, first session.)

Investigation of charges of official corruption in relation to alleged guano contracts. February 28, 1882. (S. Mis. Doc. 57, Forty-seventh Congress, first session.)

The dismemberment of Peru. March 7, 1882. (S. Mis. Doc. 62, Forty-seventh Congress, first session.)

Transmitting correspondence; the lost papers. President's message. March 16, 1882. (S. Ex. Doc. 79, part 3, Forty-seventh Congress, first session.)

Negotiations for restoration of peace in South America. President's message. March 28, 1882. (H. Ex. Doc. 142, Forty-seventh Congress, first session.)

Transmitting instructions of Secretary of State Frelinghuysen to Mr. Trescot, and other papers. President's message. March 28, 1882. (H. Ex. Doc. 142. Forty-seventh Congress, first session.)

Answer of Secretary of State to call for more correspondence in the guano claims, referring to S. Ex. Doc. 79, Forty-seventh Congress, first session. President's message. May 26, 1882. (H. Ex. Doc. 68, Forty-seventh Congress, first session.)

Report of the Committee on Foreign Affairs relative to certain missing papers from the files of the Department of State, and also relating to the connection of one or more ministers plenipotentiary of the United States with business transactions in which the intervention of the United States was requested between Chili and Peru. Guano claims of Landreau and Cochet, Peruvian Company, and Crèdit Industriel. August 1, 1882. (H. Rep. 1790, Forty-seventh Congress, first session.)

Minority report. August 5, 1882. (*Ibid.*, part 2.)

Report of Wm. Henry Trescot and Walker Blaine on the results of the special mission in South America. President's message. June 14, 1882. (S. Ex, Doc. 1881, Forty-seventh Congress, first session.)

Joint efforts of ministers of the United States, Great Britain, France, and Italy in Lima or Peru to bring about peace. Resolution requesting the President to give any information in his possession concerning the same, and to state if the United States minister has been instructed to invite or accept the mediation of European powers in the settlement of a purely American question. February 21, 1883. (S. Mis. Doc. 44, Forty-seventh Congress, second session.)

The following is a list of instructions issuing from the Department of State in 1879-'81 in reference to the war then pending between Peru, Chili, and Bolivia. These documents are published in a volume entitled "War in South America and attempt to bring about a peace," printed in the Government Printing Office in 1882. The numbers and pages refer to this volume:

1	Mr. Evarts to Mr. Pettis (No. 12).	1879. June 23	Privateering against Chilian property in neutral vessels: authorization of, by Bolivia, and proposed fitting out of privateers in the United States by Bolivian agents; instructed to inform Bolivia that treaty of 1858 exempts from capture enemy's property on board neutral vessels, and that law of the United States prohibits fitting out within its territory of expeditions against a country with which United States is at peace.	1

	r. Evarts to Mr. Pettis (No. 13).	1879. June 25	Privateering projects of Bolivia: refers t Department's No. 12 and incloses Trea ury regulations for the prevention violation of United States neutrality la by privateers in the interest of Bolivi
	Same to same (No. 17).	Aug. 8	Mediation of Colombia for cessation of tilities between Bolivia and Chili structed to inform Colombian envoy will visit La Paz to proffer such m tion, of the friendly solicitude o United States as to the result of h sion.
6	Mr. F. W. Seward to Mr. Pettis (No. 19).	Aug. 11	Neutrality of the United States dur between Bolivia and Chili: cour Pettis in assuring minister for fo fairs of, approved; reply to No
7	Same to same (No. 21).	Aug. 18	Peace action reported in his No half of, approved; position
12	Mr. Evarts to Mr. Pettis (No. 25).	Sept. 19	States on the subject of media Conduct of minister in conferrin idents of Peru and Bolivia an to a supposition that he was mission to Peru, Chili, and planation requested.
		1880.	
22	Same to Mr. Adams (No. 3).	Apr. 19	Prisoners of war: exchang Chili and Bolivia; author he can to bring about su
26	Same to same (No. 10).	Aug. 2	Policy of the United S peace: incloses correspo ister to Peru.
41	Same to same (No. 24).	Dec. 14	Peace negotiations: fail United States still rea it can for peace; his p reported in his No. 3
		1879.	
60	Mr. F. W. Seward to Mr. Osborn (No 63).	May 29	War between Chili an mitting Chili's ma declaration of war; the war is regrette
64	Mr. Evarts to Mr. Osborn (No. 70).	Aug. 8	Mediation of Colom tilities: instruct bian envoy who proffer mediatio of the United S his mission.
		1880.	
73	Same to same (No. 83).	Feb. 19	Neutral rights: tion of Chili struction of and Lobos, to inform United Sta citizens a pursuance law.
77	Same to same (No. 85).	Mar. 9	Foreign in event o pean po hostili turn t tor, r ment
80	Same to same (No. 89).	Apr. 23	Prison Chil Un aul

		1880.		
86	Mr. Evarts to Mr. Osborne (telegram).	July 29	Mediation: "Press upon Chilian Government our desire to aid in restoring peace on honorable terms."	116
98	Same to same (telegram).	Sept. 28	Peace question: "Proceed as proposed if belligerents accede; instructions to our vessels when you telegraph for them."	129
102	Same to same (No. 109).	Oct. 14	Mediation: proceedings of legation for, by the United States seem to prosper thus far; full advices awaited; No. 163 and telegram of the 9th instant received.	132
105	Same to same (telegram).	Nov. 19	Neutrals: instructed as to taking action for protection of lives and property of, when Lima is attacked by Chilians.	135
110	Same to same (No. 115).	Dec. 27	Arbitration: instructed to correct erroneous impression that the United States would not cheerfully act as arbitrator, which a certain remark made by him during peace conference may have caused.	147
		1881.		
113	Same to same (No. 119).	Feb. 10	Peace question: urge upon Chili the desire of the United States to bring about peace; now that the Chilians have captured Lima and Callao, it is believed that Peru will accept mediation of the United States upon any reasonable terms; advises him of instruction of this date to Mr. Christiancy.	151
120	Mr. Blaine to Mr. Kilpatrick (No. 2).	June 15	Intervention: instructed to encourage disposition of Chili to restore self-government in Peru; to urge Chili to enter into negotiations for peace before deciding to take portion of Peru as war indemnity, and to endeavor to have European intervention excluded from adjustment of the peace question.	157
126	Same to same (No. 13).	Nov. 22	Peace question: his note to the foreign office to allay apprehension and correct false impression produced by the United States minister at Lima strongly disapproved; Chili had no grounds for apprehension and should not have applied to legation; her course in suppressing Calderon government unintelligible in view of her previous assurances, reported in legation's No. 3; arrest of Calderon regretted; hopes it is not intended as a rebuke to the United States on account of differences between him and his colleague at Lima; a special envoy will be sent to endeavor to arrange a peace; reply to No. 8.	168
127	Same to same (telegram).	Nov. 25	Calderon government; its suppression and arrest of President Calderon are not understood by United States; special envoy leaves Washington for Chili immediately, and it is hoped that further action will await his arrival.	169
129	Same to same (No. 16).	Nov. 30	Relieves him of negotiations for solution of peace question; informs him as to appointment and powers of Mr. Trescot as special envoy extraordinary and minister plenipotentiary to conduct such negotiations; appointment of Third Assistant Secretary of State as assistant to Mr. Trescot; Mr. Kilpatrick expected to aid Mr. Trescot.	171

		1881.		
130	Mr. Blaine to Mr. Trescot (No. 1).	Nov. 30	Personal instructions as special envoy extraordinary and minister plenipotentiary to Chili, Peru, and Bolivia to negotiate for solution of peace question.	172
131	Mr. Blaine to Mr. Walker Blaine.	Nov. 30	Personal instruction as attaché to special mission for settlement of the peace question.	173
132	Mr. Blaine to Mr. Trescot (No. 2).	Dec. 1	Reviews previous instructions and steps which led to recognition of Calderon government; the act an adoption of policy friendly to Chili; it was followed by Chilian military order forbidding Calderon government to exercise its functions; President will not assume this as done in consequence of the recognition by the United States; if such a motive should be avowed, Mr. Trescot instructed to say that it is regarded as an intentional offense, and to suspend diplomatic intercourse, but he may receive any explanation which does not involve a disavowal of Mr. Hurlbut. The United States wishes first to stop bloodshed and misery; second, to take care that the Government of the United States is treated with the consideration to which it is entitled, and would be satisfied with manifestation of purpose in Chili either to restore Calderon government or establish one which will be allowed freedom of action in negotiations. Should Chili refuse to allow formation of government not pledged to consent to cession of territory, he is to express dissatisfaction of the United States. The United States recognizes Chili's right to adequate indemnity and guarantee, but that the exercise of the right of absolute conquest is dangerous; and the United States think that Peru has the right to demand an opportunity to find indemnity and guarantee without cession of territory. The prohibition of the formation of a government is practical extinction of the state. If good offices are refused on this basis, the United States holds itself free to appeal to the other Republics of the continent to join with it. Instructions given in accordance, and a temporary convention counseled.	174
134	Same to same (No. 3).	Dec. 2	Congress of American Governments: authorized to return home by way of Argentine Republic and Brazil and to urge the Governments of those countries to accept our invitation to such congress.	181
137	Mr. Blaine to Mr. Walker Blaine.	Dec. 9	Chargé; instructed to assume duties as, on his arrival at Santiago.	184
138	Mr. Blaine to Mr. Trescot (No. 4).	Dec. 16	Claims of the United States citizens *vs.* Peru; Cochet claim and Landreau claim. Explains position of the United States regarding them, in order to correct misstatements which are being circulated by the press. If Chili should acquire territory from Peru, it is expected that whatever rights Mr. Landreau may have in such territory will be respected by Chili. Correspondence with minister at Lima inclosed.	184

		1882.		
140	Mr. Frelinghuysen to Mr. Trescot (telegram).	Jan. 3	Pacific influence; informs him that same should be exerted, and all issues which might lead to his withdrawal from Chili avoided.	186
141	Same to same (telegram).	Jan. 4	Impartial extension of friendly offices to both Republics; exertion of pacific influence, and avoidance of possibly offensive issues, are desired by the President. Directs him not to return, via Buenos Ayres. Calderon difficulty can be settled here.	186
142	Mr. Frelinghuysen to Mr. Martinez.	Jan. 7	Arrest of President Calderon; requested to repeat in writing the assurance given orally by him that it was not instigated by an unfriendly feeling towards the United States.	186
143	Mr. Frelinghuysen to Mr. Trescot (No. 6).	Jan. 9	(Quoted, *supra*, § 45.)	186
146	Mr. Frelinghuysen to Mr. Martinez.	Jan. 16	Arrest of Calderon; note giving assurance that it was not intended as an affront to the United States received with gratification.	193
		1879.		
156	Mr. Evarts to Mr. Christiancy (No. 4).	Apr. 9	Approves action of Mr. Gibbs in reporting relative to the war; expresses gratification at the decision of Peru in deciding to maintain strict neutrality.	211
164	Same to same (No. 20).	June 18	Approves action in behalf of neutral rights reported in his No. 7; European capitalists are seeking to bring about an undue observance of such rights during present war; the United States not disposed to have belligerent rights abridged in behalf of neutrals; opinion of Attorney-General Stanbery justifying bombardment of unfortified places inclosed. (Quoted, *infra*, § 228.)	227
167	Same to same (No. 24).	June 26	Privateering projects of Bolivia; copy of Department's No. 12 to the United States minister at La Paz inclosed; instructed to inform Peru that the United States does not intend to permit any violation of its neutrality laws.	237
168	Mr. Evarts to Mr. Tracy.	June 27	Note of 24th instant, inclosing manifesto vindicating Peru's cause, received.	238
170	Same to same	July 19	Note of 16th instant, transmitting report made to Peruvian Congress by minister for foreign affairs, which sets forth antecedents of war, received; thanks.	240
178	Mr. Evarts to Mr. Christiancy (No. 29).	Aug. 8	Blockade of Iquique; views and proceedings set forth in his No. 34 approved; action he should take in case the blockade should at any time prove ineffectual, stated. (*Infra*, § 361.)	255
179	Same to same (No. 30).	Aug. 8	Mediation of Colombia for cessation of hostilities between the belligerents; instructed to express to Colombian envoy, who will visit Lima to proffer mediation, the friendly solicitude of the United States as to the result of his mission.	255
181	Mr. F. W. Seward to Mr. Christiancy (No. 32).	Aug. 18	Mediation of the United States for cessation of hostilities; approves Mr. Christiancy's reserve in conversing with Col. H. N. Fisher, who has no official connection with Government of the United States; Department imparted to him its position on the subject of mediation; reply to No. 37.	258

		1879.		
182	Mr. F.W. Seward to Mr. Christiancy (No. 33).	Aug. 18	Mr. Christiancy's efforts and suggestions in behalf of cessation of war approved; reply to No. 36.	258
183	Same to same (No. 34).	Aug. 18	Blockade of Iquique: instruction to consul, inclosed in his No. 39, in regard to, approved.	259
184	Mr. F. W. Seward to Mr. Tracy.	Aug. 19	Transportation of munitions of war across the Isthmus of Panama: his note of 24th ultimo, asking the Department to request Colombia to permit same, will receive consideration.	259
186	Mr. F. W. Seward to Mr. Christiancy (No. 36).	Aug. 25	Bombardment of Iquique: views of legation and its dispatch to consul at Iquique upon the subject approved; reply to No. 41.	260
191	Mr. Hunter to Mr. Tracy.	Sept. 10	Note of 4th instant, narrating events of war, received, and will be duly considered.	270
192	Same to same	Sept. 10	Transportation of munitions of war across the Isthmus of Panama; note of 22d ultimo, stating that Colombia has disapproved action of Panama in prohibiting such transportation, received.	270
198	Mr. Hunter to Mr. Christiancy (No. 39).	Oct. 1	Views which have been expressed by minister, in conversation in Lima, concerning peace question, approved; the United States does not tender its good offices for peace, but will not hesitate to use them for that purpose if called upon by belligerents to do so; the United States will not engage in any intervention which is not solicited, or which is in disparagement of belligerent rights; Mr. Pettis's unauthorized and rash experiment in visiting Lima and Santiago has had some good effects; statements in Chilian newspapers adverse to Mr. Pettis regarded as unfounded.	277
199	Mr. Evarts to Mr. Christiancy (No. 40).	Oct. 13	Pacific instructions requested in his No. 59 have already been given; approves action reported in his No. 59; instructs him as to correction of any wrong impression which may have been created by Mr. Pettis or Mr. Fisher as to policy of the United States; he may pledge immediate action by the United States for peace, provided no other Government be invited to mediate.	27[illegible]
202	Mr. F. W. Seward to Mr. Tracy.	Oct. 21	Betrayal of Peru by Bolivia; documents tending to show efforts of Chili to induce same, which accompanied his note of 17th instant, will be considered.	[illegible]
203	Mr. F. W. Seward to Mr. Christiancy (No. 42).	Oct. 22	Approves his suggestion to Mr. Osborn as to his course; Department adheres to policy indicated in previous instructions; reply to No. 62½.	[illegible]
208	Mr. Hay to Mr. Christiancy (No. 47).	Nov. 26	Communication between legation and Department; if same should be cut off by Chili, he should not adopt any special means of communication, except in case of absolute necessity.	[illegible]
		1880.		
226	Mr. Evarts to Mr. Christiancy (telegram).	Jan. 24	Recognition of Piérola's government: leaves time and manner of, to minister's discretion. (See *infra* § 70.)	[illegible]
227	Same to same (No. 55).	Jan. 26	Recognition of Piérola's government: question of, is left to ministers.	[illegible]

		1880.		
230	Mr. Evarts to Mr. Tracy.	Jan. 31	Recognition of Piérola's government: ceremonial letter received; friendly expressions.	326
131	Mr. Evarts to Mr. Christiancy (No. 57).	Feb. 4	Recognition of Piérola's government; instructed to recognize Piérola's government if he has not already done so; note of the 31st ultimo from Department to Peruvian chargé, inclosed.	326
234	Mr. Evarts to Mr. Christiancy (No. 58).	Feb. 18	Damages to American property by Chilian forces at Lobos Island; action of legation as reported in No. 105 approved.	328
235	Same to same (No. 63).	Mar. 1	Denies right of Peru to seize neutral vessels loaded with nitrates taken from beds which belong to Peru, but which are now in military possession of Chili, as treaty provides that free ships make free goods; instructed to enjoin Peru not to enforce her claimed rights; reply to No. 106; notes to foreign office in reply to its circulars inclosed for delivery.	328
236	Mr. Evarts to Mr. Calderon.	Mar. 1	Neutral vessels loaded with nitrate taken from beds which belong to Peru and are now in military possession of Chili; right claimed by Chili to seize same; United States legation at Lima will inform Peru of Department's views on subject; reply to note of 14th January.	329
237	Same to same.....	Mar. 1	Blockades established by Chili at Peruvian ports: inefficiency of; if Chili seizes any American vessel for entering a port which is insufficiently blockaded she will be required to make reparation; reply to note of 14th January.	330
238	Mr. Evarts to Mr. Christiancy (No. 64).	Mar. 1	Blockade of Mollendo by Chilian squadron: legation's instruction to consular agent at Arica relative to, approved; instructed to take no notice of any manifesto on subject unless it is addressed to him in his official capacity.	330
239	Same to same (No. 65).	Mar. 2	Belligerent rights of Peru; question as to authority of consul at Iquique, which is now in possession of the Chilians, to grant clearances to vessels loaded with nitrates taken from beds belonging to Peru, but now in military possession of Chili; No. 112 received; consuls have no right to grant clearances under any circumstances; local authorities alone have such rights; when these authorities grant vessels clearances consul should deliver to such vessels their papers; consuls cannot gainsay opinion of the existing authority at his port as to what may be lawfully exported; Peru's resentment at exportation of these nitrates is natural, but her assertion of right to seize neutral vessels loaded with them is contrary public law and will not be admitted by foreign Governments.	331
242	Same to same (No. 69).	Mar. 10	Recognition of government of Piérola; action of legation, as reported in 115, approved.	336
245	Mr. Evarts to Mr. Tracy.	Mar. 22	His note of 9th instant, denying rumor of desertion of Peru by Bolivia, acknowledged.	344

		1880.		
255	Mr. Evarts to Mr. Christiancy (No. 76).	Apr. 19	Menacing and violation of neutral rights by Chili; protest will be addressed to Chilian minister here against injury to the United States citizens; instructed to protest to Peru, in event of her resorting to wanton destruction of life and property, as Chili has done; reply to 140.	359
256	Same to same (No. 77).	Apr. 23	Exchange of prisoners of war between Bolivia and Chili; No. 3 to the United States minister at La Paz inclosed.	359
258	Mr. Evarts to Mr. Tracy.	Apr. 28	Blockade of Callao by Chilians and opening of other ports by Peru instead: announcement of, received and communicated to Treasury.	360
268	Mr. Hay to Mr. Christiancy (No. 90).	June 30	Charges preferred by Chili against Mr. Merriam, consul at Iquique, of assisting Peru in the war; instructed to investigate the same, and if they prove well founded, to remove Mr. Merriam.	378
272	Mr. Evarts to Mr. Christiancy (No. 93).	July 30	Mode suggested by United States minister at Santiago of rendering good offices of United States available for cessation of hostilities approved; confirms Department's telegram of 29th instant.	385
274	Mr. Hay to Mr. Christiancy (No. 97).	Aug. 16	Mediation; advises him of disposition of Chili to accept our mediation and asks what is the disposition of Peru.	387
275	Same to same (No. 99).	Aug. 16	Iquique; charges *vs.* Consul Merriam of having assisted Peru in the war, preferred by Chili; approves course reported in his 175.	387
276	Same to same (No. 102).	Aug. 25	Outrage perpetrated upon the United States consul and flag at Arica by Chilian soldiery: further information relative to, requested; reply to No. 183.	387
289	Same to same (No. 108).	Nov. 9	Charges preferred against consul at Iquique of assisting Peruvians in the war; approves investigation of legation; instructed to give proper attention to any further evidence in the matter which may be adduced.	423
291	Mr. Evarts to Mr. Garcia.	Nov. 13	Mediation of the United States between Peru and Chili: advises him of failure of; regret and chagrin of Department; United States will welcome any further opportunity it may have presented to it to promote restoration of peace; reply to note of 25th ultimo.	426
292	Mr. Evarts to Mr. Christiancy (No. 109).	Nov. 27	Neutrals: protection of the lives and property of, in the event of an attack by the Chilians upon Lima; gives text of Department's telegram of 19th instant to legation at Santiago.	426
294	Mr. Evarts to Mr. Garcia.	Dec. 1	Mediation of the United States between Peru and Chili; failure of peace negotiations regretted; note of 27th ultimo received.	427
295	Mr. Evarts to Mr. Christiancy, No. 112).	Dec. 13	Peace negotiations: failure of, regretted; the United States still stands ready to do whatever it properly can to bring about peace; reply to No. 200.	427
297	Mr. Hay to Mr. Garcia.	Dec. 22	Mediation of the United States between Peru and Chili: failure of; his note of 18th instant transmitting circular from his Government censuring Chili received.	429

		1881.		
300	Mr. Evarts to Mr. Christiancy (No. 119).	Jan. 25	Neutrals: jeopardization of lives and property of, by Peru in sending adrift vessels loaded with explosive materials; instructed to remonstrate if he shall ascertain that such course has been pursued by Peru. (*Infra* § 349.)	435
303	Same to same (No. 123).	Feb. 10	Desire of United States to bring about peace; instructed to urge same upon Peruvian Government, and upon such Chilian officers as he may meet; Peruvians having evacuated Lima and Callao, Peru desires foreign aid in behalf of peace, as appears from a telegram just received from the Peruvian minister here.	441
306	Same to same (No. 129).	Feb. 17	Scheme of the Société générale de crédit industrial et commercial for liquidation of financial obligations of belligerents; authorized to submit the same for consideration in connection with discussion of peace question; may advise Mr. Osborn and Mr. Adams.	449
333	Mr. Blaine to Mr. Christiancy (No. 143).	May 9	Calderon government: authorizes recognition of.	495
334	Same to same (No. 144).	May 12	Forced loans: non-liability of Americans in Peru to; his views as reported in his No. 182 approved.	495
339	Mr. Blaine to Mr. Hurlbut (No. 2).	June 15	Peace question; instructed to encourage Peruvians to accept reasonable conditions, and to impress upon Chilian authorities in Peru the advantages of liberal treatment of Peru by their Government; course which Peru should pursue so as to avoid loss of territory in indemnification of Chili; directed to aid Peru in pursuing this course; United States would assist the execution of any satisfactory plan for satisfying Chili's demands by means of money; No. 2 to legation at Santiago inclosed.	500
346	Same to same (No. 7).	Aug. 4	Claims of United States citizens *vs.* Peru, growing out of contracts; Cochet claim and claim of John C. Landreau; instructed to report on former, and to demand justice in the case of the latter; in treaty of peace between Chili and Peru, provision must be made for recognition by Chili of Landreau's claim as a prior lien upon any territory which Peru may be required to cede to Chili; sets forth denial of justice in Mr. Landreau's case.	508
351	Mr. Blaine to Mr. Elmore.	Aug. 27	Recognition of Mr. Elmore; credentials may be presented at a future time; will be informally recognized if he will deliver office copy of his credentials.	517
353	Same to same.....	Aug. 31	Recognition of Mr. Elmore; copy of credentials received; trust to be able before long to arrange for his presentation to the President; reply to note of 29th instant.	519
362	Mr. Hitt to Mr. Elmore.	Oct. 13	Peace question; may call at Department at any time for an interview; reply to note of 11th instant.	534

		1881.		
366	Mr. Blaine to Mr. Hurlbut (telegram).	Oct. 27	Financial schemes; "Influence of your position must not be used in aid of Credit Industriel or any other financial or speculative association."	545
367	Same to same (telegram).	Oct. 31	Calderon government; "Continue to recognize Calderon government until otherwise specially instructed; acknowledge receipt."	545
371	Same to same (No. 17).	Nov. 17	Claim of United States citizens *vs.* Peru; Cochet claim and Landreau claim; the former is not proper for presentation; United States citizens in purchasing the claim of a Peruvian against his Government acquires no more rights than the Peruvian had, and as he had no right to intervention of United States, such right did not pass to the purchasers of his claim; Landreau claim should be withheld from presentation until opportunity for its adjustment offers; course reported in his No. 12 approved; condemns conduct of J. R. Shipherd, attorney for the Cochet claims.	561
374	Same to same (No. 18).	Nov. 19	Financial schemes: explains Department's telegram of 27th ultimo; minister's position in regard to, for restoration of Peru should be a negative one; in case an opportunity arises for us to be useful in abetting such scheme, minister should take no important step without instructions.	564
375	Same to same (No. 19).	Nov. 22	Peace question; disapproves memorandum addressed by him to Admiral Lynch, and his note to Piérola's secretary, and the convention he concluded for establishment of naval stations at Chimbote, and his telegram to legation at Buenos Ayres requesting that a minister be sent by Argentine Republic to Peru; instructed to recognize Calderon government, or, if none such exist, to remain inactive at Lima until receipt of further instructions; in view of differences between him and his colleague at Santiago a special envoy will be sent to arrange settlement of peace question.	565
378	Same to same (telegram).	Nov. 26	Peace question; "Special envoy leaves Washington for Peru immediately; continue recognition of Calderon government."	57
379	Mr. Blaine to Mr. Elmore.	Nov. 26	Peace question; note of 18th instant received.	5
380	Mr. Blaine to Mr. Hurlbut (No. 21).	Nov. 30	Relieves him of negotiations for settlement of peace question; informs him as to appointment and powers of Mr. Trescot and Mr. Walker Blaine to conduct such negotiations; he will be expected to aid this special commission.	5
382	Same to same (No. 25).	Dec. 3	Coaling stations; strongly disapproves protocol concluded by him with Calderon government for cession of such stations to the United States, and rebukes him for concluding it; railway grant; severely reprimands him for obtaining same for himself from Peru; reply to No. 19.	5

		1881.		
383	Mr. Blaine to Mr. Hurlbut (No. 26).	Dec. 5	Cochet heirs: Claim *vs.* Peru, upon which Peruvian company's scheme is based; No. 25 received; minister's action approved; indecency and dishonor of Mr. Shipherd, the agent of the company; eminent New York gentlemen, who are alleged to belong to the company, are probably as ignorant of the use of their names as Mr. Blaine was of the absurd statements attributed to him by Mr. Shipherd.	579
394	Mr. Blaine to Mr. Morton (No. 30).	Sept. 5	Chili-Peruvian war; declination of the United States to enter into negotiations with European powers for joint intervention for peace; reply to No. 6.	597
396	Same to same (telegram).	Nov. 14	Chili-Peruvian war: full account of any interview he has had recently with French Government relative to, and especially any relating to, recognition of Peruvian minister, requested.	599
		1879.		
428	Mr. Evarts to Mr. Suarez.	Feb. 17	War indemnity: acknowledges letters relative to, and says ministers to Chili and Peru have been informed of the proposition of the société relative to payment of; the United States is ready to aid in bringing about peace.	701

(3) CUBA.

§ 60.

"In the war between France and Spain, now commencing, other interests, peculiarly ours, will in all probability be deeply involved. Whatever may be the issue of this war as between those two European powers, it may be taken for granted that the dominion of Spain upon the American continents, north and south, is irrevocably gone. But the islands of Cuba and Porto Rico still remain nominally, and so far really, dependent upon her, that she yet possesses the power of transferring her own dominion over them, together with the possession of them, to others. These islands, from their local position are natural appendages to the North American continent, and one of them (Cuba) almost in sight of our shores, from a multitude of considerations has become an object of transcendent importance to the commercial and political interests of our Union. Its commanding position, with reference to the Gulf of Mexico and the West India seas; the character of its population; its situation midway between our southern coast and the island of San Domingo; its safe and capacious harbor of the Havana, fronting a long line of our shores destitute of the same advantage; the nature of its productions and of its wants, furnishing the supplies and needing the returns of a commerce immensely profitable and mutually beneficial, give it an importance in the sum of our national interests with which that of no other foreign territory can be compared, and little inferior to that which binds the different members of this Union together. Such,

indeed, are, between the interests of that island and of this country, the geographical, commercial, moral, and political relations formed by nature, gathering, in the process of time, and even now verging to maturity, that, in looking forward to the probable course of events for the short period of half a century, it is scarcely possible to resist the conviction that the annexation of Cuba to our Federal Republic will be indispensable to the continuance and integrity of the Union itself.

"It is obvious, however, that for this event we are not yet prepared. Numerous and formidable objections to the extension of our territorial dominions beyond sea present themselves to the first contemplation of the subject; obstacles to the system of policy by which alone that result can be compassed and maintained are to be foreseen and surmounted, both from at home and abroad; but there are laws of political as well as of physical gravitation; and if an apple, severed by the tempest from its native tree, cannot choose but fall to the ground, Cuba, forcibly disjoined from its own unnatural connection with Spain, and incapable of self-support, can gravitate only towards the North American Union, which, by the same law of nature, cannot cast her off from its bosom.

"In any other state of things than that which springs from this incipient war between France and Spain, these considerations would be premature. They are now merely touched upon to illustrate the position that, in the war opening upon Europe, the United States have deep and important interests involved, peculiarly their own. The condition of Cuba cannot but depend upon the issue of this war. As an integral part of the Spanish territories, Cuba has been formally and solemnly invested with the liberties of the Spanish constitution. To destroy those liberties, and to restore, in the stead of that constitution, the dominion of the Bourbon race, is the avowed object of this new invasion of the Peninsula. There is too much reason to apprehend that, in Spain itself, this unhallowed purpose will be attended with immediate, or at least with temporary success. The constitution of Spain will be demolished by the armies of the Holy Alliance, and the Spanish nation will again bow the neck to the yoke of bigotry and despotic sway. Whether the purposes of France, or of her continental allies, extend to the subjugation of the remaining ultramarine possessions of Spain or not, has not yet been sufficiently disclosed. But to confine ourselves to that which immediately concerns us—the condition of the Island of Cuba—we know that the republican spirit of freedom prevails among its inhabitants. The liberties of the constitution are to them rights in possession; nor is it to be presumed that they will be willing to surrender them, because they may be extinguished by foreign violence in the parent country. As Spanish territory, the island will be liable to invasion from France during the war; and the only reasons for doubting whether the attempt will be made, are the probable incompetency of the French maritime force to effect the conquest, and the probability that

its accomplishment would be resisted by Great Britain. In the mean time, and at all events, the condition of the island in regard to that of its inhabitants is a condition of great, imminent, and complicated danger; and without resorting to speculation upon what such a state of things must produce upon a people so situated, we know that its approach has already had a powerful effect upon them, and that the question, what they are to do upon contingencies daily pressing upon them, and ripening into reality, has for the last twelve months constantly excited their attention and stimulated them to action. Were the population of the island of one blood and color, there could be no doubt or hesitation with regard to the course which they would pursue, as dictated by their interests and their rights; the invasion of Spain by France would be the signal for their declaration of independence. That even in their present state it will be imposed upon them as a necessity is not unlikely; but among all their reflecting men it is admitted, as a maxim fundamental to all deliberation upon their future condition, that they are not competent to a system of permanent self-dependence; they must rely for the support of protection upon some force from without; and in the event of the overthrow of the Spanish constitution, that support can no longer be expected from Spain—their only alternative of dependence must be upon Great Britain or upon the United States.

"Hitherto the wishes of this Government have been that the connection between Cuba and Spain should continue as it has existed for several years; these wishes are known to the principal inhabitants of the island, and instructions, copies of which are now furnished you, were some months since transmitted to Mr. Forsyth, authorizing him in a suitable manner to communicate them to the Spanish Government. These wishes still continue, so far as they can be indulged with a rational foresight of events beyond our control, but for which it is our duty to be prepared. If a Government is to be imposed by foreign violence upon the Spanish nation, and the liberties which they have asserted by their constitution are to be crushed, it is neither to be expected nor desired that the people of Cuba, far from the reach of the oppressors of Spain, should submit to be governed by them. Should the cause of Spain itself issue more propitiously than from its present prospects can be anticipated, it is obvious that the trial through which she must pass at home, and the final loss of all her dominions on the American continents, will leave her unable to extend to the Island of Cuba that protection necessary for its internal security and its outward defense.

"Great Britain has formally withdrawn from the councils of the European alliance in regard to Spain; she disapproves the war which they have sanctioned, and which is undertaken by France, and she avows her determination to defend Portugal against the application of the principles upon which the invasion of Spain raises its only pretense of right.

"To the war as it commences she has declared her intention of remaining neutral; but the spirit of the British nation is so strongly and with so much unanimity pronounced against France, their interests are so deeply involved in the issue, their national resentments and jealousies will be so forcibly stimulated by the progress of the war, whatever it may be, that, unless the conflict should be as short and the issue as decisive as that of which Italy was recently the scene, it is scarcely possible that the neutrality of Great Britain should be long maintained. The prospect is that she will soon be engaged on the side of Spain; but, in making common cause with her, it is not to be supposed that she will yield her assistance upon principles altogether disinterested and gratuitous. As the price of her alliance, the two remaining islands of Spain in the West Indies present objects no longer of much possible value or benefit to Spain, but of such importance to Great Britain that it is impossible to suppose her indifferent to the acquisition of them. The motives of Great Britain for desiring the possession of Cuba are so obvious, especially since the independence of Mexico and the annexation of the Floridas to our Union; the internal condition of the island since the recent Spanish revolution, and the possibility of its continued dependence upon Spain, have been so precarious; the want of protection there, the power of affording it possessed by Great Britain, and the necessities of Spain, to secure, by some equivalent, the support of Great Britain for herself, have formed a remarkable concurrence of predispositions to the transfer of Cuba, and during the last two years rumors have been multiplied that it was already consummated. We have been confidently told, by indirect communication from the French Government, that more than two years since Great Britain was negotiating with Spain for the cession of Cuba, and so eager in the pursuit as to have offered Gibraltar, and more, for it in exchange. There is reason to believe that, in this respect, the French Government was misinformed; but neither is entire reliance to be placed on the declaration lately made by the present British secretary for foreign affairs to the French Government, and which, with precautions indicating distrust, has been also confidentially communicated to us, viz, that Great Britain would hold it disgraceful to avail herself of the distressed situation of Spain to obtain possession of any portion of her American colonies.

"The object of this declaration, and of the communication of it here, undoubtedly was to induce the belief that Great Britain entertained no purpose of obtaining the possession of Cuba; but these assurances were given with reference to a state of peace then still existing, and which it was the intention and hope of Great Britain to preserve. The condition of all the parties to them has since changed, and however indisposed the British Government might be ungenerously to avail themselves of the distress of Spain to extort from her any remnant of her former possessions, they did not forbear to take advantage of it by order of reprisals given to two successive squadrons dispatched to the

West Indies, and stationed in immediate proximity to the Island of Cuba.

"By measures thus vigorous and peremptory, they obtained from Spain an immediate revocation of the blockade which her generals had proclaimed on the coast of Terra Firma, and pledges of reparation for all the captures of British vessels made under cover of that military fiction. They obtained also an acknowledgment of many long-standing claims of British subjects upon the Spanish Government, and promises of payment of them as a part of the national debt. The whole amount of them, however, as well as that of the reparation and indemnity promised for the capture of British property under the blockades of General Morales and by the Porto Rico privateers, yet exists in the form of claims; and the whole mass of them now is acknowledged claim, for the satisfaction of which pledges have been given to be redeemed hereafter; and for which the Island of Cuba may be the only indemnity in the power of Spain to grant, as it would undoubtedly be to Great Britain the most satisfactory indemnity which she could receive.

"The war between France and Spain changes so totally the circumstances under which the declaration above mentioned of Mr. Canning was made, that it may, at its very outset, produce events under which the possession of Cuba may be obtained by Great Britain without even raising a reproach of intended deception against the British Government for making it. An alliance between Great Britain and Spain may be one of the first fruits of this war. A guarantee of the island to Spain may be among the stipulations of that alliance; and in the event either of a threatened attack upon the island by France, or of attempts on the part of the islanders to assume their independence, a resort to the temporary occupation of the Havana by British forces may be among the probable expedients through which it may be obtained, by concert between Great Britain and Spain herself. It is not necessary to point out the numerous contingencies by which the transition from a temporary and fiduciary occupation to a permanent and proprietary possession may be effected.

"The transfer of Cuba to Great Britain would be an event unpropitious to the interests of this Union. The opinion is so generally entertained, that even the groundless rumors that it was about to be accomplished, which have spread abroad, and are still teeming, may be traced to the deep and almost universal feeling of aversion to it, and to the alarm which the mere probability of its occurrence has stimulated. The question both of our right and of our power to prevent it, if necessary by force, already obtrudes itself upon our councils, and the Administration is called upon, in the performance of its duties to the nation, at least, to use all the means within its competency to guard against and forefend it.

It will be among the primary objects requiring your most earnest and unremitting attention to ascertain and report to us every movement of negotiation between Spain and Great Britain upon this subject. We cannot, indeed, prescribe any special instructions in relation to it. We scarcely know where you will find the Government of Spain upon your arrival in the country, nor can we foresee with certainty by whom it will be administered. Your credentials are addressed to Ferdinand, the King of Spain under the constitution. You may find him under the guardianship of the Cortes, under the custody of an army of faith, or under the protection of the invaders of his country. So long as the constitutional Government may continue to be administered in his name your official intercourse will be with his ministers, and to them you will repeat what Mr. Forsyth has been instructed to say, that the wishes of your Government are that Cuba and Porto Rico may continue in connection with independent and constitutional Spain.

"You will add that no countenance has been given by us to any projected plan of separation from Spain which may have been formed in the island. This assurance becomes proper, as by a late dispatch received from Mr. Forsyth he intimates that the Spanish Government have been informed that a revolution in Cuba was secretly preparing, fomented by communications between a society of Freemasons there and another of the same fraternity in Philadelphia. Of this we have no other knowledge; and the societies of Freemasons in this country are so little in the practice of using agency of a political nature on any occasion, that we think it most probable the information of the Spanish Government in that respect is unfounded. It is true that the Freemasons at the Havana have taken part of late in the politics of Cuba, and, so far as it is known to us, it has been an earnest and active part in favor of the continuance of their connection with Spain. While disclaiming all disposition on our part either to obtain possession of Cuba or Porto Rico ourselves, you will declare that the American Government had no knowledge of the lawless expedition undertaken against the latter of those islands last summer."

Mr. Adams, Sec. of State, to Mr. Nelson, Apr. 28, 1823; MSS. Inst. Ministers; published in Br. and For. St. Pap. (1853–'4), vol. 44, p. 138. Portions of these instructions are in 5 Am. St. Pap. (For. Rel.), 408.

"With Europe we have few occasions of collision, and these, with a little prudence and forbearance, may be generally accommodated. Of the brethren of our own hemisphere, none are yet, or for an age to come will be, in a shape, condition, or disposition to war against us. And the foothold which the nations of Europe had in either America is slipping from under them, so that we shall soon be rid of their neighborhood. Cuba alone seems at present to hold up a speck of war to us. Its possession by Great Britain would indeed be a great calamity to us. Could we induce her to join us in guaranteeing its independence against all the world, *except* Spain, it would be nearly as valuable as if it were our own. But should she take it, I would not immediately go to war

for it; because the first war on other accounts will give it to us, or the island will give itself to us when able to do so. While no duty, therefore, calls on us to take part in the present war of Europe, and a golden harvest offers itself in reward for doing nothing, peace and neutrality seem to be our duty and interest. We may gratify ourselves, indeed, with a neutrality as partial to Spain as would be justifiable without giving cause of war to her adversary. We might and ought to avail ourselves of the happy occasion of procuring and cementing a cordial reconciliation with her by giving assurance of every friendly office which neutrality admits, and especially against all apprehension of our intermeddling in the quarrel with her colonies. And I expect daily and confidently to hear of a spark kindled in France which will employ her at home and relieve Spain from all further apprehensions of danger."

Mr. Jefferson to President Monroe, June 11, 1823; 7 Jeff. Works, 288. For another portion of this letter see *supra*, § 45; see also Mr. Jefferson to President Monroe, October 24, 1823, quoted *supra*, § 57.

"I had supposed" (when writing a former letter) "an English interest there (in Cuba) quite as strong as that of the United States, and therefore that to avoid war and keep the island open to our own commerce, it would be best to join that power in mutually guaranteeing its independence. But if there is no danger of its falling into the possession of England, I must retract an opinion founded on an error of fact. We are surely under no obligation to give her gratis an interest which she has not; and the whole inhabitants being averse to her, and the climate mortal to strangers, its continued military occupation by her would be impracticable. It is better, then, to lie still, in readiness to receive that interesting incorporation when solicited by herself, for certainly her addition to our confederacy is exactly what is wanted to round our power as a nation to the point of its utmost interest."

Mr. Jefferson to Mr. Monroe, President, June 23, 1823; Monroe Pap., Dep. of State; 7 Jeff. Works, 299. See *supra*, §§ 45, 57.

Instructions were sent, under direction of the President (Mr. J. Q. Adams), by Mr. Clay, when Secretary of State, to the ministers to the leading European Governments to announce "that the United States, for themselves, desired no change in the political condition of Cuba; that they were satisfied that it should remain, open as it now is, to their commerce, and that they could not with indifference see it passing from Spain to any (other) European power."

Mr. Clay, Sec. of State, to Mr. King, Oct. 17, 1825; MSS. Inst. Ministers.

"You will now add that we could not consent to the occupation of those islands (Cuba and Porto Rico) by any other European power than Spain under any contingency whatever."

Mr. Clay to Mr. Brown, Oct. 25, 1825; MSS. Inst. Ministers.

The following is from the diary of Lord Ellenborough, under date of February 8, 1830, Lord Ellenborough being at the time a cabinet minister in the Duke of Wellington's administration:

"It appears, on looking over the papers of 1825 and 1826, that so far from our having prohibited Mexico and Colombia from making any attack upon Cuba, we uniformly abstained from doing anything of the

kind. The Americans declared that they could not see with indifference any state other than Spain in possession of Cuba, and further, their disposition to interpose their power should war be conducted in Cuba in a *devastating* manner, and with a view to the excitement of a servile war."

2 Diary, &c., 188.

In 1825 the British Government suggested to the Governments of France and of the United States a joint declaration by the three Governments (as an inducement to Spain to acknowledge South American independence), that they would not permit Cuba to be wrested from Spain. The Government of the United States held this under advisement, and on France declining, the proposal was dropped.

Mr. Clay, Sec. of State, to Mr. King, Oct. 25, 1825; MSS. Inst. Ministers.

Subsequently, however, the United States refused to enter into any joint arrangements with foreign powers as to Cuba. See further instructions in this section, and *supra*, §§ 72, 102.

As to the attitude that would be assumed by the United States in case of the South American states, then at war with Spain, attacking Cuba and carrying on the war in a "desolating manner," see letter of Mr. Clay, Sec. of State, to Mr. Middleton, Dec. 26, 1825; MSS. Inst. Ministers.

The note of Mr. A. H. Everett, minister to Spain, on Jan. 20, 1826, to the Spanish minister of foreign affairs, will be found in House Ex. Doc. No. 246, 20th Cong., 1st. sess.

"If the acquisition of Cuba were desirable to the United States, there is believed to be no reasonable prospect of effecting, at this conjuncture, that object. And if there were any, the frankness of their diplomacy, which has induced the President freely and fully to disclose our views both to Great Britain and France, forbids absolutely any movement whatever, at this time, with such a purpose. This condition of the great maritime powers (the United States, Great Britain, and France) is almost equivalent to an actual guarantee of the islands to Spain. But we can enter into no stipulations by treaty to guarantee them."

Mr. Clay, Sec. of State, to Mr. A. H. Everett, Apr. 13, 1826; MSS. Inst. Ministers. (See more fully Mr. Clay to Messrs. Anderson and Sergeant, May 8, 1826, *ibid.*)

Mr. Gallatin, when minister at London, tried "to impress strongly on his (Mr. Canning's) mind that it was impossible that the United States could acquiesce in the conquest by, or transfer of, that island (Cuba) to any great maritime power."

Mr. Gallatin to Mr. Clay, Sec. of State, Dec. 22, 1826; 2 Gallatin's Writings, 34

"The Government has always looked with the deepest interest upon the fate of those islands, but particularly of Cuba. Its geographical position, which places it almost in sight of our southern shores, and, as it were, gives it the command of the Gulf of Mexico and the West Indian seas, its safe and capacious harbors, its rich productions, the ex-

change of which for our surplus agricultural products and manufactures, constitutes one of the most extensive and valuable branches of our foreign trade, render it of the utmost importance to the United States that no change should take place in its condition which might injuriously affect our political and commercial standing in that quarter. Other considerations connected with a certain class of our population, make it the interest of the southern section of the Union that no attempt should be made in that island to throw off the yoke of Spanish dependence, the first effect of which would be the sudden emancipation of a numerous slave population, whose result could not but be very sensibly felt upon the adjacent shores of the United States.

"On the other hand, the wisdom which induced the Spanish Government to relax in its colonial system, and to adopt with regard to those islands, a more liberal policy which opened their ports to general commerce, has been so far satisfactory, in the view of the United States, as, in addition to other considerations, to induce this Government to desire that their possession should not be transferred from the Spanish Crown to any other power."

Mr. Van Buren, Sec. of State, to Mr. Van Ness, Oct. 2, 1829; MSS. Inst. Ministers.

See publications in Br. and For. St. Pap., 1837–'38, vol. 26, 1124 *ff.* including: Mr. Forsyth (Madrid) to Mr. Adams (Sec.), Nov. 20, 1822; Mr. Forsyth (Madrid) to Mr. Adams (Sec.), Dec. 13, 1822; Mr. Adams to Mr. Forsyth, Dec. 17, 1822; Mr. Forsyth to Mr. Adams, Feb. 10, 1823; Mr. Adams to Mr. Nelson, Apr. 28, 1823 (suggesting purchase of Cuba); Mr. Appleton (Cadiz) to Mr. Adams, July 10, 1823; Mr. Nelson to Mr. Clay (Sec.), July 10, 1825; Mr. Clay to Mr. Everett, April 15, 1825; Mr. Clay to Mr. Everett, Apr. 27, 1825; Mr. Nelson to Mr. Bermudez, June 22, 1825; Mr. Bermudez to Mr. Nelson, July 12, 1825 (stating that Spain would not part with Cuba); Mr. Everett to Mr. Clay, Sept. 25, 1825; Mr. Everett to Mr. Clay, Aug. 17, 1827; the Spanish minister at London to the minister of state, June 1, 1827; Mr. Everett to Mr. Clay, Dec. 12, 1827; confidential memorandum of Mr. Everett for the Spanish secretary of state, Dec. 10, 1827, stating, among other things, that the Government of "His Catholic Majesty cannot be ignorant of the movements commenced a few months ago by the British ministry, in conjunction with the Spanish refugees in London, and now in the course of execution, for the purpose of revolutionizing the Island of Cuba and the Canaries," saying that the United States would not consent to Cuba passing to any third power, and complaining of discrimination against the United States; Mr. Van Buren (Sec.), to Mr. Van Ness (Madrid), Oct. 2, 1829, taking the same position as to transfer of Cuba to another power; Mr. Van Buren to Mr. Van Ness, Oct. 13, 1830, saying that "the President does not see on what ground he would be justified in interfering with any attempts which the South American states might think it for their interest, in the prosecution of a defensive war, to make upon the island in question"; Mr. Van Ness (Madrid) to Mr. Forsyth (Sec.), Aug. 16, 1836, speaking of rumors of disquiet in Cuba; Mr. Van Ness to Mr. Forsyth, Dec. 10, 1836, as to the effect of Spanish political changes on Cuba; Mr. Stevenson (London) to Mr. Forsyth, June 16, 1839, as to conversation with Lord Palmerston, Mr. S. protesting against foreign interference in Cuba; Mr. Eaton (Madrid) to Mr. Forsyth, Aug. 10, 1837, stating that Mr. Villiers, British minister in Spain, disclaimed the idea of Great Britain taking Cuba.

"If, indeed, an attempt should be made to disturb them [the Spanis West Indies] by putting arms in the hands of one portion of their po ulation to destroy another, and which, in its influence, would endang the peace of a portion of the United States, the case might be differe Against such an attempt the United States (being informed that it w in contemplation) have already protested, and warmly remonstrated their communications, last summer, with the Government of Mexi- But the information lately communicated to us, in this regard, accompanied by a solemn assurance that no such measures will, in event, be resorted to; and that the contest, if forced upon them, be carried on, on their part, with strict reference to the establis ed rules of civilized warfare."

Mr. Van Buren, Sec. of State, to Mr. Van Ness, Oct. 13, 1830; MSS. Inst. Ministers.

The correspondence in reference to the quintuple treaty of 1842 is given in Senate Doc. No. 223, 27th Cong., 3d sess.

As to policy of the United States in respect to Cuba, see further, Brit. and For. St. Pap. for 1843-'4, vol. 32, 861.

"A communication from a highly respectable source has just been received at this Department, which purports to contain information of so serious a nature in regard to the present condition of the Island of Cuba, that the President has come to the conclusion that it is expedient to lose no time in ascertaining, if practicable, how far the real facts of the case may correspond with the representations. The name of the individual from which these accounts have come is, for good reasons, withheld. It is sufficient to say that they come from the island, and have been transmitted from thence by a person of high standing, whose statements, as we are told by those who know the source, are believed to be entitled to as much consideration as those of any individual in Cuba.

"Acting under this belief, and influenced by the consideration that this Government has frequently received intimations from various quarters in regard to Cuba which give a color of probability to the statements which have thus been recently received, the President has instructed me to make this communication to you, to call your attention to the matter, and to desire you to transmit all the information you possess or can obtain in regard to it.

"The necessity of absolute secrecy in everything that relates to the inquiries you are directed to make, and in the transmission of their result to your Government, has obliged us to send to Havana a special messenger, who will take charge of and deliver to you in person this letter, and who will be directed to remain with you for some short time to afford you opportunity to prepare a reply, and to impart all the intelligence which may be within your reach.

"It is proper, however, to apprise you that it is highly desirable that there should be as little detention as possible, as the President is ex-

ceedingly anxious to be well informed upon the subject at the earliest practicable moment.

"The messenger is unacquainted with the contents of this letter, and it is not necessary or desirable that the subject of this correspondence should be in any way made known to him. The amount of the information which has been received is this: The writer represents himself as bound in honor not to reveal what he has made known to his correspondent in the United States to the local authorities of Cuba, for reasons which can only be guessed at.

"His statements, confirmed as they appear to be in some particulars by various recent occurrences of a public character with which you cannot but be familiar, are considered as entitled at least to serious attention, and to call for immediate examination and reply.

"It is represented that the situation of Cuba is at this moment in the highest degree dangerous and critical, and that Great Britain has resolved upon its ruin; that Spain does not or will not see this intention, and that the authorities of the island are utterly incompetent to meet the crisis; that, although, according to the treaty of 1817, the slave-trade ought not to have been carried on by any subject of Spain, it has nevertheless been continued in full vigor up to the year 1841, notwithstanding the incessant remonstrances of the British Government, which was better informed, it is said, from month to month, of everything that took place in the island than the captain-general himself. It is alleged that the British ministry and abolition societies, finding themselves foiled or eluded by the colonial and home governments, have therefore resolved, not perhaps without secretly congratulating themselves upon the obstinacy of Spain, upon accomplishing their object in a different method, by the total and immediate ruin of the island. Their agents are said to be now there in great numbers, offering independence to the creoles, on condition that they will unite with the colored people in effecting a general emancipation of the slaves, and in converting the Government into a black military Republic, under British protection. The British abolitionists reckon on the naval force of their Government, stationed at Jamaica and elsewhere, and are said to have offered two large steam ships-of-war, and to have proposed to the Venezuelan general, Merino, who resides at Kingston, Jamaica, to take the command of the invading army. This is to be seconded, as is suggested, by an insurrection of the slaves and free men of color, supported by the white creoles.

"If this scheme should succeed, the influence of Britain in this quarter, it is remarked, will be unlimited. With 600,000 blacks in Cuba and 800,000 in her West India Islands, she will, it is said, strike a death-blow at the existence of slavery in the United States. Intrenched at Havana and San Antonio, ports as impregnable as the rock of Gibraltar, she will be able to close the two entrances to the Gulf of Mexico,

and even to prevent the free passage of the commerce of the United States over the Bahama Banks and through the Florida Channel.

"The local authorities are believed not to be entirely ignorant of the perils which environ them, but are regarded as so torpid as not to be competent to understand the extent and imminency of those perils, nor the policy by which Great Britain is guided.

"The wealthy planters are described as equally blind to the great danger in which they stand of losing their property. They go on, it is said, as usual, buying negroes, clamoring for the continuation of the trade, and denouncing as seditious persons and friends of Great Britain, the few who resist the importation of slaves and encourage the immigration of free whites.

"The writer points to the census of the population of the island, taken by authority, and just published, of which he incloses a copy; and from the proportion between the different colors he infers the probability that the white creoles will be able to preserve their rights in the future Ethiopico-Cuban Republic; and as to the Spaniards, he presumes they will leave the island at once. The writer very naturally supposes that the United States must feel a deep solicitude upon a subject which so nearly concerns their own interests and tranquillity. He seems anxious that public opinion in this country should be formed upon it, and properly directed, and does not hesitate to express the opinion that the mass of the white population in Cuba, in easy circumstances, including the Spaniards, prefer, and will always prefer, the flag of the United States to that of England.

"In thus communicating to you the substance of the statements of this writer, you will distinctly understand that your Government neither adopts nor rejects his speculations. It is with his statement of supposed facts that it concerns itself; and it is expected that you will examine and report upon them with scrupulous care, and with as much promptness as strict secrecy and discretion will permit; and the whole of the statements is now imparted to you, not to limit, but to guide and direct the inquiries you are called upon to make in so delicate a matter. It is quite obvious that any attempt on the part of England to employ force in Cuba, for any purpose, would bring on a war, involving, possibly, all Europe, as well as the United States; and as she can hardly fail to see this, and probably does not desire it, there may be reason to doubt the accuracy of the information we have received to the extent to which it proceeds. But many causes of excitement and alarm exist, and the great magnitude of the subject makes it the duty of the Government of the United States to disregard no intimations of such intended proceedings which bear the least aspect of probability. The Spanish Government has long been in possession of the policy and wishes of this Government in regard to Cuba, which have never changed, and has repeatedly been told that the United States never would permit the occupation of that island by British agents or forces upon any pretext

whatever; and that in the event of any attempt to wrest it from her, she might securely rely upon the whole naval and military resources of this country to aid her in preserving or recovering it.

"A copy of this letter will be immediately transmitted to the American minister at Madrid, that he may make such use of the information it contains as circumstances may appear to require."

Mr. Webster, Sec. of State, to Mr. Campbell, Jan. 14, 1843; MSS. Inst. Consuls; republished in Br. and For. State Pap. (1853–'54) vol. 44, p. 174.

The United States will resist at every hazard an attempt of any foreign power to wrest Cuba from Spain. "And you are authorized to assure the Spanish Government that in case of any attempt, from whatever quarter, to wrest from her this portion of her territory, she may securely depend upon the military and naval resources of the United States to aid her in preserving or recovering it."

Mr. Forsyth, Sec. of State, to Mr. Vail, July 15, 1840; MSS. Inst., Spain.
To same effect, Mr. Upshur, Sec. of State, to Mr. Irving, Oct. 10, 1843, *ibid.*; Mr. Buchanan, Sec. of State, to Mr. Saunders, June 13, 1847, *ibid.*; same to same, June 17, 1848, *ibid.*

The United States will not tolerate any invasions of Cuba by citizens of neutral States.

Mr. Buchanan, Sec. of State, to Mr. Saunders, June 13, 1847; MSS. Inst., Spain.
For reasons why the annexation of Cuba to the United States would be beneficial to the United States, Cuba, and Spain, see Mr. Buchanan, Sec. of State, to Mr. Saunders, June 17, 1848; MSS. Inst., Spain.

"As to the purchase of Cuba from Spain, we do not desire to renew the proposition made by the late Administration on this subject. It is understood that the proposition made by our late minister at Madrid, under instructions from this Department, or from the late President of the United States, was considered by the Spanish ministry as a national indignity, and that the sentiment of the ministry was responded to by the Cortes. After all that has occurred, should Spain desire to part with the island, the proposition for its cession to us should come from her; and in case she should make any, you will content yourself with transmitting the same to your Government for consideration."

Mr. Clayton, Sec. of State, to Mr. Barringer, Aug. 2, 1849; MSS. Inst., Spain.

"Mr. Rives writes that a treaty has been entered into between France, Spain, and Great Britain to guarantee Cuba to Spain, but does not send it, or its contents or date. The English chargé gives us notice that England has ordered her vessels to protect Cuba against the unlawful invasion from this country, but says he knows of no treaty. Mr. Rives has been written to for further information. It appears to me that such a step on the part of Great Britain is ill advised; and if the attempts upon Cuba shall be resumed (which I trust they will not be) any attempt to prevent such expeditions by British cruisers must necessarily

involve a right of search into our whole mercantile marine in those seas, to ascertain who ought to be arrested and who ought to pass; and this would be extremely annoying, and well calculated to disturb the friendly relations now existing between the two Governments."

President Fillmore to Mr. Webster, Sec. of State, Washington, Oct. 2, 1851; 2 Curtis' Life of Webster, p. 551.

"The information communicated by Mr. Rives, if true, may become important; but we must wait to learn its particulars. I doubt exceedingly whether the English Government would do so rash a thing as to interfere with American vessels on the seas, under pretense of their containing Cuban invaders. This could never be submitted to. I do not think that any attempt is likely to be made at present by these lawless people, as I do not see where they can now raise the funds, and, therefore, I hope we may have no more trouble. If an official communication be made to us of such a treaty as Mr. Rives supposes may have been entered into it will deserve close consideration. We must look to our own antecedents. In General Jackson's time it was intimated to Spain, by our Government, that if she would not cede Cuba to any European power we would assist her in maintaining possession of it. A lively fear existed at that time that England had designs upon the island. The same intimation was given to Spain, through Mr. Irving, when I was formerly in the Department of State. Mr. J. Quincy Adams often said that, if necessary, we ought to make war with England sooner than to acquiesce in her acquisition of Cuba. It is indeed obvious enough what danger there would be to us if a great naval power were to possess this key to the Gulf of Mexico and the Caribbean Sea. Before receiving your letter I had made up my mind that if this matter of the treaty between England and France should be announced to us, and should seem to require immediate attention, I would hasten to Washington."

Mr. Webster, Sec. of State, to President Fillmore, Marshfield, Oct. 4, 1851; 2 Curtis' Life of Webster, 551.

For an account of the application of the doctrine of intervention to the West Indies by European powers, and of the position of the United States, see 1 Phillimore Int. Law, 3 ed., 600.

For Mr. Fillmore's course as to neutrality in respect to Cuba, see Doc. No. 41 31st Cong., 2d Sess.

Reports made by heads of Departments on June 3 and June 19, 1850, on revolutionary movements in Cuba, will be found in Senate Ex. Doc. No. 57, 31 Cong., 1st Sess.

"The geographical position of the Island of Cuba, in the Gulf of Mexico, lying at no great distance from the mouth of the river Mississippi and in the line of the greatest current of the commerce of the United States, would become, in the hands of any powerful European nation, an object of just jealousy and apprehension to the people of this country. A due regard to their own safety and interest must therefore

make it a matter of importance to them who shall possess and hold dominion over that island. The Government of France and those of other European nations were long since officially apprised by this Government that the United States could not see without concern that island transferred by Spain to any other European State."

Mr. Crittenden, Acting Sec. of State, to Mr. Sartiges, Oct. 22, 1851. MSS. Notes, France.

Joint directions by the Governments of France and of England to their ships of war to aid Spain in preventing by force adventurers of any nation from landing with hostile intent on the Island of Cuba cannot but be regarded by the United States with grave disapproval, as involving on the part of European sovereigns combined action of protectorship over American waters

Mr. Crittenden, Acting Sec. of State, to Mr. Sartiges, Oct. 22, 1851. MSS. Notes, France. See Mr. Webster, Sec. of State, to Mr. Sartiges, Apr. 29, 1852, *ibid.*

Mr. Webster, in his letter of April 29, 1852, to Count Sartiges, took the position that "if Spain should refrain from a voluntary cession of the island (of Cuba) to any other European power she might rely on the countenance and friendship of the United States to assist her in the defense and preservation of that island." This, so far as it implied a guarantee against insurrection (in which sense it was interpreted by Count Sartiges in his letter of July 5, 1852,) was disclaimed by Mr. Everett, who succeeded Mr. Webster as Secretary after the latter's death.

See review of the correspondence by Mr. Trescot, South. Quar. Rev., April, 1854; and see, also, *infra*, § 72.

"The colonies of Spain are near to our own shores. Our commerce with them is large and important, and the records of the diplomatic intercourse between the two countries will manifest to Her Catholic Majesty's Government how sincerely and how steadily the United States has manifested the hope that no political changes might lead to a transfer of these colonies from Her Majesty's Crown. If there is one among the existing Governments of the civilized world which for a long course of years has diligently sought to maintain amicable relations with Spain it is the Government of the United States. Not only does the correspondence between the two Governments show this, but the same truth is established by the history of the legislation of this country and the general course of the executive government. In this recent invasion, Lopez and his fellow subjects in the United States succeeded in deluding a few hundred men by a long-continued and systematic misrepresentation of the political condition of the island and of the wishes of its inhabitants. And it is not for the purpose of reviewing unpleasant recollections that Her Majesty's Government is reminded that it is not many years since the commerce of the United States suffered severely from armed boats and vessels which found refuge and shelter in the ports of the Spanish islands. These violators of the law, these authors of gross violence towards the citizens of this Republic, were finally suppressed, not by any effort of the Spanish au-

thorities, but by the activity and vigilance of our Navy. This, however, was not accomplished but by the efforts of several years, nor until many valuable lives, as well as a vast amount of property, had been lost. Among others, Lieutenant Allen, a very valuable and distinguished officer in the naval service of the United States, was killed in an action with these banditti.

Mr. Webster, Sec. of State, to Mr. Barringer, Nov. 26, 1851. MSS. Inst. Spain.

To the same effect see 6 Webster's Works, 573, *ff.*; 2 Curtis's Life of Webster, 557. As to such intercession, see *supra*, § 52.

"There is no doubt that Lord Malmesbury has justly described the course of policy which has influenced the Government of the United States heretofore in regard to the Island of Cuba. It has been stated and often repeated to the Government of Spain by this Government, under various Administrations, not only that the United States have no design upon Cuba themselves, but that if Spain should refrain from a voluntary cession of the island to any other European power she might rely on the countenance and friendship of the United States to assist her in the defense and preservation of that island. At the same time it has always been declared to Spain that the Government of the United States could not be expected to acquiesce in the cession of Cuba to an European power. The undersigned is happy in being able to say that the present Executive of the United States entirely approves of this past policy of the Government, and fully concurs in the general sentiments expressed by Lord Malmesbury, and understood to be identical with those entertained by the Government of France. The President will take Mr. Crampton's communication into consideration and give it his best reflections. But the undersigned deems it his duty at the same time to remind Mr. Crampton, and through him his Government, that the policy of that of the United States has uniformly been to avoid as far as possible alliances or agreements with other states, and to keep itself free from national obligations, except such as affect directly the interests of the United States themselves."

Mr. Webster, Sec. of State, to Mr. Crampton, Apr. 29, 1852. MSS. Notes, Gr. Brit. See Mr. Webster, Sec. of State, to Mr. Sartiges, Apr. 29, 1852. MSS. Notes, France.

Mr. Fillmore's message of July 13, 1852, and the accompanying documents, are in House Ex. Doc. No. 121, 31st Cong., 1st sess.

"The United States, on the other hand, would, by the proposed convention, disable themselves from making an acquisition which might take place without any disturbance of existing foreign relations and in the natural order of things. The Island of Cuba lies at our doors. It commands the approach to the Gulf of Mexico, which washes the shores of five of our States. It bars the entrance of that great river which drains half the North American continent, and with its tributaries forms the largest system of internal water communication in the

world. It keeps watch at the doorway of our intercourse with California, by the Isthmus route. If an island like Cuba, belonging to the Spanish Crown, guarded the entrance of the Thames and the Seine, and the United States should propose a convention like this to France and England, those powers would assuredly feel that the disability assumed by ourselves was far less serious than that which we asked them to assume. The opinions of American statesmen, at different times and under varying circumstances, have differed as to the desirableness of the acquisition of Cuba by the United States. Territorially and commercially it would in our hands be an extremely valuable possession. Under certain contingencies it might be almost essential to our safety. Still for domestic reasons, on which in a communication of this kind it might not be proper to dwell, the President thinks that the incorporation of the island into the Union at the present time, although effected with the consent of Spain, would be a hazardous measure; and he would consider its acquisition by force, except in a just war with Spain, should an event so greatly to be deprecated take place, as a disgrace to the civilization of the age."

Mr. Everett, Sec. of State, to Mr. Crampton, Dec. 1, 1852. MSS. Notes Gr. Brit. See Mr. Everett and the Cuban Question, by Mr. Trescot, 9 South, Quar. Rev., new series, Apr., 1854, 429. For Mr. Everett's views in full, see *infra*, § 72.

To enter into a compact with European powers to the effect that the United States, as well as the other contracting powers, would disclaim all intention, now or hereafter, to obtain possession of Cuba, would be inconsistent with the principles, the policy, and the traditions of the United States.

Mr. Everett, Sec. of State, to Mr. Crampton, Dec. 3, 1852; MSS. Notes, Gr. Brit., *infra*, § 72.

"The affairs of Cuba formed a prominent topic in my last annual message. They remain in an uneasy condition, and a feeling of alarm and irritation on the part of the Cuban authorities appears to exist. This feeling has interfered with the regular commercial intercourse between the United States and the island, and led to some acts of which we have a right to complain. But the captain-general of Cuba is clothed with no power to treat with foreign Governments, nor is he in any degree under the control of the Spanish minister at Washington. Any communication which he may hold with an agent of a foreign power is informal and a matter of courtesy. Anxious to put an end to the existing inconveniences (which seemed to rest on a misconception), I directed the newly appointed minister to Mexico to visit Havana, on his way to Vera Cruz. He was respectfully received by the captain-general, who conferred with him freely on the recent occurrences, but no permanent arrangement was effected. In the mean time the refusal of the captain-general to allow passengers and the mail to be landed in certain

cases, for a reason which does not furnish, in the opinion of this Government, even a good presumptive ground for such a prohibition, has been made the subject of a serious remonstrance at Madrid; and I have no reason to doubt that due respect will be paid by the Government of His Catholic Majesty to the representations which our minister has been instructed to make on the subject.

"It is but justice to the captain-general to add that his conduct toward the steamers employed to carry the mails of the United States to Havana has, with the exceptions above alluded to, been marked with kindness and liberality, and indicates no general purpose of interfering with the commercial correspondence and intercourse between the island and this country.

"Early in the present year official notes were received from the ministers of France and England inviting the Government of the United States to become a party with Great Britain and France to a tripartite convention, in virtue of which the three powers should severally and collectively disclaim, now and for the future, all intention to obtain possession of the Island of Cuba, and should bind themselves to discountenance all attempts to that effect on the part of any power or individual whatever. This invitation has been respectfully declined, for reasons which would occupy too much space in this communication to state in detail, but which led me to think that the proposed measure would be of doubtful constitutionality, impolitic, and unavailing. I have, however, in common with several of my predecessors, directed the ministers of France and England to be assured that the United States entertain no designs against Cuba, but that, on the contrary, I should regard its incorporation into the Union at the present time as fraught with serious peril.

"Were this island comparatively destitute of inhabitants, or occupied by a kindred race, I should regard it, if voluntarily conceded by Spain, as a most desirable acquisition; but under existing circumstances I should look upon its incorporation into our Union as a very hazardous measure. It would bring into the confederacy a population of a different national stock, speaking a different language, and not likely to harmonize with the other members. It would probably affect in a prejudicial manner the industrial interests of the South; and it might revive those conflicts of opinion which lately shook the Union to its center, and which have been so happily compromised."

President Fillmore, Third Annual Message, 1852.

"I transmit you a document printed by order of the House of Representatives" (not, however, referred to by number) "which will acquaint you with the steps taken by France, England, and the United States to preserve the tranquillity and integrity of the eastern portion of the island of San Domingo. The policy pursued by the United States in this respect has been wholly disinterested. It has been, no doubt, in

our power to obtain a permanent foothold in Dominica; and we have as much need of a naval station at Samana as any European power could possibly have. It has, however, been the steady rule of our policy to avoid, as far as possible, all disturbance of the existing political relations of the West Indies. We have felt that any attempts on the part of any one of the great maritime powers to obtain exclusive advantages in any of the islands where such an attempt was likely to be made, would be apt to be followed by others, and end in converting the archipelago into a great theater of national competition for exclusive advantages and territorial acquisitions which might become fatal to the peace of the world."

Mr. Everett, Sec. of State, to Mr. Rives, Dec. 17, 1852. MSS. Inst., France.
President Fillmore's message of Jan. 4, 1853, and Mr. Everett's report of the same day, as to tripartite convention, is in Senate Ex. Doc. No. 13, 32d Cong., 2d sess.

"I ought not to conclude this communication without indicating the views of the President in relation to the intervention of Great Britain, in conjunction with France, in the affairs of Cuba. These powers proposed to this Government, in April, 1852, to enter into a tripartite convention for guaranteeing the Spanish dominion over Cuba. The proposition was very properly declined by this Government. * * *

"For many reasons the United States feel deeply interested in the destiny of Cuba. They will never consent to its transfer to either of the intervening nations, or to any other foreign state. They would regret to see foreign powers interfere to sustain Spanish rule in the island should it provoke resistance too formidable to be overcome by Spain herself."

Mr. Marcy, Sec. of State, to Mr. Buchanan, July 2, 1853. MSS. Inst., Gr. Brit.

"Nothing will be done on our part to disturb its (Cuba's) present connection with Spain, unless the character of that connection should be so changed as to affect our present or prospective security. While the United States would resist at every hazard the transference of Cuba to any European nation, they would exceedingly regret to see Spain resorting to any power for assistance to uphold her rule over it. Such a dependence on foreign aid would in effect invest the auxiliary with the character of a protector, and give it a pretext to interfere in our affairs, and also generally in those of the North American continent."

Mr. Marcy, Sec. of State, to Mr. Soulé, July 23, 1853. MSS. Inst., Spain. See same to same, Apr. 3, 1854; Nov. 13, 1854, *ibid.*; Mr. Marcy to Mr. Dodge, May 1, 1854, *ibid.*

"Should the rule of Spain over Cuba be so severe as to excite revolutionary movements in that island, she will undoubtedly find volunteers in the ranks of the Cubans from various countries, and, owing to very obvious causes, more from the United States probably than from any other; but it would be unjust to impute to this and the other Governments to

which those volunteers formerly belonged an unfriendly disposition towards her, or a desire to aid clandestinely in the attempt to wrest that island from her. There is reason to believe that Spain herself, as well as other European Governments, suspects that the people of the United States are desirous of detaching Cuba from its present transatlantic dependence, regardless of the rights of Spain, with a view of annexing it to this Union; and that our Government was disposed to connive at the participation of our citizens in the past disturbances in that island, and would again do so on the recurrence of similar events. Our defense against such an unfounded suspicion, and the only one which self-respect allows us to make, is an appeal to our past course."

Mr. Marcy, Sec. of State, to Mr. Soulé, July 23, 1853. MSS. Inst., Spain.
As to seizure of Black Warrior, see House Ex. Doc. No. 76, 86, 33d Cong., 1st sess., House Ex. Doc. No. 93, 33d Cong., 2d sess.; and see *infra*, § 189.

"Should you find persons of position or influence disposed to converse on the subject, the considerations in favor of a cession [of Cuba] are so many and so strong that those who can be brought to listen would very likely become converts to the measure. But should you have reason to believe that the men in power are averse to entertaining such a proposition,—that the offer of it would be offensive to the national pride of Spain, and that it would find no favor in any considerable class of the people, then it will be but too evident that the time for opening or attempting to open such negotiation has not arrived. It appears to the President that nothing could be gained and something might be lost by an attempt to push on a negotiation against such a general resistance. This view of the case is taken on the supposition that you shall become convinced that a proposition for the cession of Cuba would certainly be rejected."

Mr. Marcy, Sec. of State, to Mr. Soulé, Nov. 13, 1854. MSS. Inst., Spain.
As to purchase of Cuba, see Mr. Marcy, Sec. of State, to Mr. Buchanan, June 27, 1854. MSS. Inst., Gr. Brit.

"In the summer of 1854 a conference was held by the ministers of the United States accredited at London, Paris, and Madrid, with a view to consult on the negotiations which it might be advisable to carry on simultaneously at these several courts, for the satisfactory adjustment with Spain of the affairs connected with Cuba. The joint dispatch of Messrs. Buchanan, Mason, and Soulé to the Secretary of State, dated Aix-la-Chapelle, October 18, 1854, after remarking that the United States had never acquired a foot of territory, not even after a successful war with Mexico, except by purchase or by the voluntary application of the people, as in the case of Texas, thus proceeds: 'Our past history forbids that we should acquire the Island of Cuba without the consent of Spain, unless justified by the great law of self-preservation. We must, in any event, preserve our own conscious rectitude and our self-respect. Whilst pursuing this course, we can afford to disregard the censures of the world, to which we have been so often and so unjustly exposed. After we shall have offered Spain a price for Cuba far beyond its present value, and this shall have been refused, it will then be time to con-

sider the question, does Cuba, in the possession of Spain, seriously endanger our internal peace and the existence of our cherished Union? Should this question be answered in the affirmative, then by every law, human and divine, we shall be justified in wresting it from Spain, if we possess the power; and this upon the very same principle that would justify an individual in tearing down the burning house of his neighbor if there were no other means of preventing the flames from destroying his own home. Under such circumstances, we ought neither to count the cost nor regard the odds which Spain might enlist against us. We forbear to enter into the question whether the present condition of the island would justify such a measure. We should, however, be recreant to our duty, be unworthy of our gallant forefathers, and commit base treason against our posterity should we permit Cuba to be Africanized and become a second St. Domingo, with all its attendant horrors to the white race, and suffer the flames to extend to our own neighboring shores, seriously to endanger or actually to consume the fair fabric of our Union, and lest there might be any misapprehension of this language as implying the alternative of cession and seizure, except as the result of absolute necessity, Mr. Marcy, Secretary of State, writes, November 13, 1854, to Mr. Soulé: 'To conclude that, on the rejection of a proposition to cede, seizure should ensue, would be to assume that self-preservation necessitates the acquisition of Cuba by the United States; that Spain has refused, and will persist in refusing, our reclamations for injuries and wrongs inflicted, and that she will make no arrangement for our future security against the recurrence of similar injuries and wrongs.' Cong. Doc., 33d Cong., 2d sess., H. R. No. 93. See for the documents *in extenso*, the last edition of this work, App., p. 672, and Lawrence on Visitation and Search, App., p. 205."

Lawrence's Wheaton (ed. 1863), 149, 150.

As to Ostend Conference, see House Ex. Doc. No. 93, 33d Cong., 2d sess.; containing also correspondence as to spoliation of Black Warrior and other spoliations.

"The truth is, that Cuba, in its existing colonial condition, is a constant source of injury and annoyance to the American people. It is the only spot in the civilized world where the African slave trade is tolerated; and we are bound by treaty with Great Britain to maintain a naval force on the coast of Africa, at much expense both of life and treasure, solely for the purpose of arresting slavers bound to that island. The late serious difficulty between the United States and Great Britain respecting the right of search, now so happily terminated, could never have arisen if Cuba had not afforded a market for slaves. As long as this market shall remain open there can be no hope for the civilization of benighted Africa. Whilst the demand for slaves continues in Cuba, wars will be waged among the petty and barbarous chiefs in Africa for the purpose of seizing subjects to supply this trade. In such a condition of affairs it is impossible that the light of civilization and religion can ever penetrate these dark abodes.

"It has been made known to the world by my predecessors that the United States have, on several occasions, endeavored to acquire Cuba from Spain by honorable negotiation. If this were accomplished, the

last relic of the African slave trade would instantly disappear. We would not, if we could, acquire Cuba in any other manner. This is due to our national character. All the territory which we have acquired since the origin of the Government has been by fair purchase from France, Spain, and Mexico, or by the free and voluntary act of the independent State of Texas in blending her destinies with our own. This course we shall ever pursue, unless circumstances should occur which we do not now anticipate, rendering a departure from it clearly justifiable under the imperative and overruling law of self-preservation.

"The Island of Cuba, from its geographical position, commands the mouth of the Mississippi and the immense and annually increasing trade, foreign and coastwise, from the valley of that noble river, now embracing half the sovereign States of the Union. With that island under the dominion of a distant foreign power, this trade, of vital importance to these States, is exposed to the danger of being destroyed in time of war, and it has hitherto been subjected to perpetual injury and annoyance in time of peace. Our relations with Spain, which ought to be of the most friendly character, must always be placed in jeopardy, whilst the existing colonial government over the island shall remain in its present condition.

"Whilst the possession of the island would be of vast importance to the United States, its value to Spain is, comparatively, unimportant. Such was the relative situation of the parties when the great Napoleon transferred Louisiana to the United States. Jealous as he ever was of the national honor and interests of France, no person throughout the world has imputed blame to him for accepting a pecuniary equivalent for this cession."

President Buchanan, Second Annual Message, 1858.

Mr. Slidell's report on acquisition of Cuba, Jan. 24, 1859, is in Senate Rep. Com. No. 351, 35th Cong., 2d sess.

For minority report, of Jan. 24, 1859, of committee in the House of Representatives, objecting to the bill appropriating $30,000,000 for the purchase of Cuba, see House Rep. No. 134, 35th Cong., 2d sess.

"I need not repeat the arguments which I urged in my last annual message, in favor of the acquisition of Cuba by fair purchase. My opinions on that measure remain unchanged. I, therefore, again invite the serious attention of Congress to this important subject. Without a recognition of this policy on their part, it will be almost impossible to institute negotiations with any reasonable prospect of success."

President Buchanan, Third Annual Message, 1859

"I reiterate the recommendation contained in my annual message of December, 1858, and repeated in that of December, 1859, in favor of the acquisition of Cuba from Spain by fair purchase. I firmly believe that such an acquisition would contribute essentially to the well-being and prosperity of both countries in all future time, as well as prove the

certain means of immediately abolishing the African slave trade throughout the world. I would not repeat this recommendation upon the present occasion if I believed that the transfer of Cuba to the United States, upon conditions highly favorable to Spain, could justly tarnish the national honor of the proud and ancient Spanish monarchy. Surely no person ever attributed to the First Napoleon a disregard of the national honor of France for transferring Louisiana to the United States for a fair equivalent, both in money and commercial advantages."

President Buchanan, Fourth Annual Message, 1860.

"As the United States is the freest of all nations, so, too, its people sympathize with all peoples struggling for liberty and self-government. But while so sympathizing, it is due to our honor that we should abstain from enforcing our views upon unwilling nations, and from taking an interested part, *without invitation*, in the quarrels between different nations or between Governments and their subjects. Our course should always be in conformity with strict justice and law, international and local. Such has been the policy of the Administration in dealing with these questions. For more than a year a valuable province of Spain, and a near neighbor of ours, in whom all our people cannot but feel a deep interest, has been struggling for independence and freedom. The people and Government of the United States entertain the same warm feelings and sympathies for the people of Cuba, in their pending struggle, that they manifested throughout the previous struggles between Spain and her former colonies in behalf of the latter. But the contest has at no time assumed the conditions which amount to a war in the sense of international law, or which would show the existence of a *de facto* political organization of the insurgents sufficient to justify a recognition of belligerency.

"The principle is maintained, however, that this nation is its own judge when to accord the rights of belligerency, either to a people struggling to free themselves from a Government they believe to be oppressive, or to independent nations at war with each other.

"The United States have no disposition to interfere with the existing relations of Spain to her colonial possessions on this continent. They believe that in due time Spain and other European powers will find their interest in terminating those relations, and establishing their present dependencies as independent powers—members of the family of nations. These dependencies are no longer regarded as subject to transfer from one European power to another. When the present relation of colonies ceases they are to become independent powers, exercising the right of choice and of self-control in the determination of their future condition and relations with other powers.

"The United States, in order to put a stop to bloodshed in Cuba, and in the interest of a neighboring people, proposed their good offices to bring the existing contest to a termination. The offer, not being

accepted by Spain on a basis which we believed could be received by Cuba, was withdrawn. It is hoped that the good offices of the United States may yet prove advantageous for the settlement of this unhappy strife."

President Grant, First Annual Message, 1869.
As to Cuban insurrection, 1869, see Sen. Ex. Doc. No. 7, 41st Cong., 2d sess.; House Ex. Doc. No. 140, No. 160.

"In my annual message to Congress, at the beginning of its present session, I referred to the contest which had then for more than a year existed in the Island of Cuba between a portion of its inhabitants and the Government of Spain, and the feelings and sympathies of the people and Government of the United States for the people of Cuba, as for all peoples struggling for liberty and self-government, and said that 'the contest has at no time assumed the conditions which amount to war, in the sense of international law, or which would show the existence of a *de facto* political organization of the insurgents sufficient to justify a recognition of belligerency.'

"During the six months which have passed since the date of that message, the condition of the insurgents has not improved; and the insurrection itself, although not subdued, exhibits no signs of advance, but seems to be confined to an irregular system of hostilities, carried on by small and illy-armed bands of men, roaming, without concentration, through the woods and the sparsely populated regions of the island, attacking from ambush convoys and small bands of troops, burning plantations and the estates of those not sympathizing with their cause.

"But if the insurrection has not gained ground, it is equally true that Spain has not suppressed it. Climate, disease, and the occasional bullet have worked destruction among the soldiers of Spain; and although the Spanish authorities have possession of every seaport and every town on the island, they have not been able to subdue the hostile feeling which has driven a considerable number of the native inhabitants of the island to armed resistance against Spain, and still leads them to endure the dangers and the privations of a roaming life of guerrilla warfare.

"On either side the contest has been conducted, and is still carried on, with a lamentable disregard of human life, and of the rules and practices which modern civilization has prescribed in mitigation of the necessary horrors of war. The torch of Spaniard and of Cuban is alike busy in carrying devastation over fertile regions; murderous and revengeful decrees are issued and executed by both parties. Count Valmaseda and Colonel Boet, on the part of Spain, have each startled humanity and aroused the indignation of the civilized world by the execution, each, of a score of prisoners at a time, while General Quesada, the Cuban chief, coolly, and with apparent unconsciousness of aught else than a proper act, has admitted the slaughter, by his own deliberate order, *in* one day, of upward of six hundred and fifty prisoners of war.

"A summary trial, with few, if any, escapes from conviction, followed by immediate execution, is the fate of those arrested on either side on suspicion of infidelity to the cause of the party making the arrest.

"Whatever may be the sympathies of the people or of the Government of the United States for the cause or objects for which a part of the people of Cuba are understood to have put themselves in armed resistance to the Government of Spain, there can be no just sympathy in a conflict carried on by both parties alike in such barbarous violation of the rules of civilized nations, and with such continued outrage upon the plainest principles of humanity.

"We cannot discriminate in our censure of their mode of conducting their contest between the Spaniards and the Cubans; each commit the same atrocities and outrage alike the established rules of war.

"The properties of many of our citizens have been destroyed or embargoed, the lives of several have been sacrificed, and the liberty of others has been restrained. In every case that has come to the knowledge of the Government, an early and earnest demand for reparation and indemnity has been made, and most emphatic remonstrance has been presented against the manner in which the strife is conducted, and against the reckless disregard of human life, the wanton destruction of material wealth, and the cruel disregard of the established rules of civilized warfare.

"I have, since the beginning of the present session of Congress, communicated to the House of Representatives, upon their request, an account of the steps which I had taken, in the hope of bringing this sad conflict to an end, and of securing to the people of Cuba the blessings and the right of independent self-government. The efforts thus made failed, but not without an assurance from Spain that the good offices of this Government might still avail for the objects to which they had been addressed.

"During the whole contest the remarkable exhibition has been made of large numbers of Cubans escaping from the island and avoiding the risks of war; congregating in this country at a safe distance from the scene of danger, and endeavoring to make war from our shores, to urge our people into the fight which they avoid, and to embroil this Government in complications and possible hostilities with Spain. It can scarce be doubted that this last result is the real object of these parties, although carefully covered under the deceptive and apparently plausible demand for a mere recognition of belligerency.

"It is stated, on what I have reason to regard as good authority, that Cuban bonds have been prepared to a large amount, whose payment is made dependent upon the recognition by the United States of either Cuban belligerency or independence. The object of making their value thus contingent upon the action of this Government is a subject for serious reflection.

"In determining the course to be adopted on the demand thu
for a recognition of belligerency, the liberal and peaceful pri
adopted by the "Father of his Country" and the eminent states
his day, and followed by succeeding Chief Magistrates and the
their day, may furnish a safe guide to those of us now charged w
direction and control of the public safety.

"From 1789 to 1815 the dominant thought of our statesmen
keep the United States out of the wars which were devastating E
The discussion of measures of neutrality begins with the state
of Mr. Jefferson when Secretary of State. He shows that th
measures of national right as well as of national duty; that mis
individual citizens cannot be tolerated in making war according t
own caprice, passions, interests, or foreign sympathies; that the
of foreign Governments, recognized or unrecognized, cannot be
ted to abuse our hospitality by usurping the functions of enlist
equipping military or naval forces within our territory. Wash
inaugurated the policy of neutrality and of absolute abstinence fr
foreign entangling alliances, which resulted, in 1794, in the first
ipal enactment for the observance of neutrality.

"The duty of opposition to filibustering has been admitted by
President. Washington encountered the efforts of Genet and the
revolutionists; John Adams, the projects of Miranda; Jefferso
schemes of Aaron Burr. Madison and subsequent Presidents
deal with the question of foreign enlistment or equipment in the
States, and since the days of John Quincy Adams it has been one
constant cares of Government in the United States to prevent p
expeditions against the feeble Spanish-American Republics from
our shores. In no country are men wanting for any enterpr
holds out promise of adventure or of gain.

"In the early days of our national existence the whole con
America (outside of the limits of the United States), and all its
were in colonial dependence upon European powers.

"The revolutions which, from 1810, spread almost simul
through the Spanish-American continental colonies, result
establishment of new states, like ourselves, of European o
interested in excluding European politics and the questions
and of balances of power from further influence in the New

"The American policy of neutrality, important before, bec
so, from the fact that it became applicable to the new Repu
as to the mother country.

"It then devolved upon us to determine the great interna
tion, at what time and under what circumstances to rec
power as entitled to a place among the family of nations, a
preliminary question of the attitude to be observed by this
toward the insurrectionary party, pending the contest.

"Mr. Monroe concisely expressed the rule which has controlled the action of this Government with reference to revolting colonies pending their struggle, by saying, 'As soon as the movement assumed such a steady and consistent form as to make the success of the provinces probable, the rights to which they were entitled, by the laws of nations as equal parties to a civil war, were extended to them.'

"The strict adherence to this rule of public policy has been one of the highest honors of American statesmanship, and has secured to this Government the confidence of the feeble powers on this continent, which induces them to rely upon its friendship and absence of designs of conquest, and to look to the United States for example and moral protection. It has given this Government a position of prominence and of influence which it should not abdicate, but which imposes upon it the most delicate duties of right and of honor regarding American questions, whether those questions affect emancipated colonies or colonies still subject to European dominions.

"The question of belligerency is one of fact not to be decided by sympathies for or prejudices against either party. The relations between the parent state and the insurgents must amount, in fact, to war in the sense of international law. Fighting, though fierce and protracted, does not alone constitute war; there must be military forces acting in accordance with the rules and customs of war—flags of truce, cartels, exchange of prisoners, &c.—and to justify a recognition of belligerency there must be, above all, a *de facto* political organization of the insurgents sufficient in character and resources to constitute it, if left to itself, a state among nations capable of discharging the duties of a state, and of meeting the just responsibilities it may incur as such toward other powers in the discharge of its national duties.

"Applying the best information which I have been enabled to gather, whether from official or unofficial sources, including the very exaggerated statements which each party gives to all that may prejudice the opposite or give credit to its own side of the question, I am unable to see, in the present condition of the contest in Cuba, those elements which are requisite to constitute war in the sense of international law.

"The insurgents hold no town or city; have no established seat of Government; they have no prize courts; no organization for the receiving and collecting of revenue; no sea-port to which a prize may be carried or through which access can be had by a foreign power to the limited interior territory and mountain fastnesses which they occupy. The existence of a legislature representing any popular constituency is more than doubtful.

"In the uncertainty that hangs around the entire insurrection there is no palpable evidence of an election, of any delegated authority, or of any Government outside the limits of the camps occupied from day to day by the roving companies of insurgent troops. There is no commerce; no trade, either internal or foreign; no manufactures.

"The late commander-in-chief of the insurgents, having recently come to the United States, publicly declared that 'all commercial intercourse or trade with the exterior world has been utterly cut off,' and he further added, 'To-day we have not ten thousand arms in Cuba.'

"It is a well-established principle of public law that a recognition by a foreign state of belligerent rights to insurgents under circumstances such as now exist in Cuba, if not justified by necessity, is a gratuitous demonstration of moral support to the rebellion. Such necessity may yet hereafter arrive, but it has not yet arrived, nor is its probability clearly to be seen.

"If it be war between Spain and Cuba, and be so recognized, it is our duty to provide for the consequences which may ensue in the embarrassment to our commerce and the interference with our revenue.

"If belligerency be recognized, the commercial marine of the United States becomes liable to search and to seizure by the commissioned cruisers of both parties—they become subject to the adjudication of prize courts.

"Our large coastwise trade between the Atlantic and the Gulf States, and between both and the Isthmus of Panama and the states of South America (engaging the larger part of our commercial marine) passes, of necessity, almost in sight of the Island of Cuba. Under the treaty with Spain of 1795, as well as by the law of nations, our vessels will be liable to visit on the high seas. In case of belligerency, the carrying of contraband, which now is lawful, becomes liable to the risks of seizure and condemnation. The parent Government becomes relieved from responsibility for acts done in the insurgent territory, and acquires the right to exercise against neutral commerce all the powers of a party to a maritime war. To what consequences the exercise of those powers may lead, is a question which I desire to commend to the serious consideration of Congress.

"In view of the gravity of this question, I have deemed it my duty to invite the attention of the war-making power of the country to all the relations and bearings of the question in connection with the declaration of neutrality and granting of belligerent rights.

"There is not a *de facto* government in the Island of Cuba sufficient to execute law and maintain just relations with other nations. Spain has not been able to suppress the opposition to Spanish rule on the island, nor to award speedy justice to other nations, or citizens of other nations, when their rights have been invaded.

"There are serious complications growing out of the seizure of American vessels upon the high seas, executing American citizens without proper trial, and confiscating or embargoing the property of American citizens. Solemn protests have been made against every infraction of the rights either of individual citizens of the United States or the rights of our flag upon the high seas, and all proper steps have been taken

and are being pressed for the proper reparation of every indignity complained of.

"The question of belligerency, however, which is to be decided upon definite principles and according to ascertained facts, is entirely different from and unconnected with the other questions of the manner in which the strife is carried on on both sides, and the treatment of our citizens entitled to our protection.

"These questions concern our own dignity and responsibility, and they have been made, as I have said, the subjects of repeated communications with Spain, and of protests and demands for redress on our part. It is hoped that these will not be disregarded; but should they be, these questions will be made the subject of further communication to Congress."

President Grant, Special Message of June 13, 1870.

"It is to be regretted that the disturbed condition of the Island of Cuba continues to be a source of annoyance and of anxiety. The existence of a protracted struggle in such close proximity to our own territory, without apparent prospect of an early termination, cannot be other than an object of concern to a people who, while abstaining from interference in the affairs of other powers, naturally desire to see every country in the undisturbed enjoyment of peace, liberty, and the blessings of free institutions.

"Our naval commanders in Cuban waters have been instructed, in case it should become necessary, to spare no effort to protect the lives and property of bona-fide American citizens, and to maintain the dignity of the flag.

"It is hoped that all pending questions with Spain growing out of the affairs in Cuba may be adjusted in the spirit of peace and conciliation which has hitherto guided the two powers in their treatment of such questions."

President Grant, Third Annual Message, 1871.

Senate Ex. Doc. No. 32, 42d Cong., 2d sess., gives Mr. Fish's report of Feb. 9, 1872, with accompanying papers. See *supra*, § 57, for Mr. Fish's report of July 14, 1870.

"The present ministry in Spain has given assurance to the public, through their organs of the press, and have confirmed the assurance to you personally (as you have reported in recent dispatches), of their intention to put in operation a series of extensive reforms, embracing among them some of those which this Government has been earnest in urging upon their consideration in relation to the colonies which are our near neighbors.

"Sustained, as is the present ministry, by the large popular vote which has recently returned to the Cortes an overwhelming majority in its support, there can be no more room to doubt their ability to carry into operation the reforms of which they have given promise, than there

can be justification to question the sincerity with which the assurance was given. It seems, therefore, to be a fitting occasion to look back upon the relations between the United States and Spain, and to mark the progress which may have been made in accomplishing those objects in which we have been promised her co-operation. It must be acknowledged with regret that little or no advance has been made. The tardiness in this respect, however, cannot be said to be in any way imputable to a want of diligence, zeal, or ability in the legation of the United States at Madrid. The Department is persuaded that no persons, however gifted with those qualities and faculties, could have better succeeded against the apparent apathy or indifference of the Spanish authorities, if, indeed, their past omission to do what we have expected should not be ascribable to other causes.

"The Spanish Government, partly at our instance, passed a law providing for the gradual emancipation of slaves in the West India colonies. This law, so far as this Department is aware, remains unexecuted, and it is feared that the recently issued regulations, professedly for its execution, are wholly inadequate to any practical result in favor of emancipation, if they be not really in the interest of the slaveholder and of the continuance of the institution of slavery. While we fully acknowledge our obligation to the general rule which requires a nation to abstain from interference in the domestic concerns of others, circumstances warrant partial exceptions to this rule. The United States have emancipated all the slaves in their own territory, as the result of a civil war of four years, attended by a vast effusion of blood and expenditure of treasure. The slaves in the Spanish possessions near us are of the same race as those who were bondsmen here. It is natural and inevitable for the latter to sympathize in the oppression of their brethren, and especially in the waste of life, occasioned by inhuman punishments and excessive toil. Nor is this sympathy confined to those who were recently in bondage among us. It is universal, as it is natural and just. It rests upon the instincts of humanity, and is the recognition of those rights of man which are now universally admitted. Governments cannot resist a conviction so general and so righteous as that which condemns as a crime the tolerance of human slavery, nor can Governments be in fault in raising their voice against the further tolerance of so grievous a blot upon humanity. You will, consequently, in decisive but respectful terms, remonstrate against the apparent failure of Spain to carry into full effect the act referred to. We acknowledge that this may be a difficult task. The reproaches, open or covert, of those whose supposed interests may be affected by it, to say nothing of other underhand proceedings, must be trying to the patience and highly embarrassing to the statesmen who may be the best disposed toward the measure. All, however, who countenance lukewarmness or neglect in carrying it into effect must, more or less,

be liable to the charge of duplicity or bad faith, a charge which every man of honor in high station ought to endeavor to avoid.

"By the enactment of the law of July, 1870, the Government of Spain is practically committed to the policy of emancipation. It is true that the law was far from being as comprehensive a measure as was hoped for by the friends of emancipation both in Spain and throughout Christendom, but it was regarded as the entering-wedge and the first step toward the extermination of a great wrong, and as the inauguration of a measure of justice and peace, whereby Spain, to her high honor, declared herself in harmony with the general sentiment of modern civilization and with the principles of unquestioned human rights. It is so manifestly due to that sentiment and to those principles that their recognition, as thus evidenced, be made practical and effective by the enforcement of the law, that it cannot be questioned that Spain, with the pride and the honor that mark her history, will no longer delay the execution of the law and the observance of the pledge to humanity and to justice which was implied in the enactment.

"There is another view which may be taken of this subject. The Spanish Government and the Spanish people are understood to be almost unanimously adverse to the independence of Cuba. It will not be denied that the resistance to the enforcement of the emancipation law proceeds almost entirely from those interested in slave property in the Island of Cuba, who have, through the successive ministries to which the Government of Spain has been intrusted since the enactment of the law in July, 1870, been enabled hitherto to delay and to defeat its execution by preventing the promulgation of regulations effective for the end to which the law was directed.

"An important law is thus nullified through the influence and agency of a class in Cuba who are the most loud in profession of devotion to the integrity of the Spanish territory and to the continuance of Spanish dominion over the island. The example of disregard to laws thus set cannot be without its influence. If Spain permits her authority to be virtually and practically defied in that island by a refusal or neglect to carry into effect acts of the home Government of a humane tendency, is not this tantamount to an acknowledgment of inability to control? If she refuse to enforce her authority in one instance, why may it not be spurned in others, and will not her supremacy, sooner or later, become nominal only, with no real advantage to herself or her colonies, but to the serious detriment of both, as well as of those other powers whose relations, whether of neighborhood or of commerce, give them special interest in the welfare of those possessions?

"It is also represented that the grasping cupidity of sugar-planters in Cuba has succeeded in enabling them virtually to annul their contracts with coolies for a limited term of service, coupled with the privilege of returning to their homes at its close, and that those unfortunate Asiatics, under regulations for an enforced re-engagement when their

former contract may have expired, are being practically reduced same abject condition as the African slaves. If this be true, it possible for the Government of any civilized country to be indi to so atrocious a proceeding. You will mention this subject Spanish minister for foreign affairs, and will not conceal the view we take of it.

"The insurrection in Cuba has now lasted four years. Attem suppress it, so far futile, have been made probably at a sacri more than a hundred thousand lives and an incalculable amo property. Our commercial and other connections with that compel us to take a warm interest in its peaceful and orderly con without which there cannot be prosperity.

"Cuba being separated from this country by a narrow passag temptations for reckless adventurers here to violate our law and e in hostile expeditions thither is great, despite the unquestione lance of this Government to maintain its duty and the efforts with the approaches to the island have been guarded by the Spanish ers. The said proximity has led Cubans and others, partisans insurgents, to take up their abode in the United States, actuat the hope that that proximity would enable them advantageously and act for the advancement of their cause in the island. We cer have reason to expect that the great strain upon our watchfuln thwart those schemes occasioned by the long duration of hostili Cuba, should have some termination through a cessation of the which hitherto has been supposed to make it necessary for the dis of our duties as a neutral.

"Ever since the insurrection began, we have repeatedly been upon to discharge those duties. In the performance of them conscious of no neglect, but the trial to our impartiality by the w success on the part of Spain in suppressing the revolt is necessa severe that unless she shall soon be more successful it will forc this Government the consideration of the question, whether d itself and to the commercial interests of its citizens may not d some change in the line of action it has thus far pursued.

"It is intimated, and is probably true, that the corruption w more or less inseparable from such protracted contests is itself cipal agent in prolonging hostilities in Cuba. The extortions in to furnishing supplies for the troops, the hope of sharing in th ceeds of insurgent or alleged insurgent property, would, of cou put an end to by the restoration of tranquillity. These must be ful agencies in fettering the arm which ought to strike home for for order, and the quiet enjoyment of the citizen. It is reasona suppose, too, that the saving of the public money which must from a termination of the conflict would alone be a sufficient tive for a patriotic Government to exert itself to the utmost fo purpose.

"Besides a measure for the abolition of slavery, and assurances of the speedy termination of the contest in Cuba, we have been assured that extensive municipal reforms would be introduced in the colonies, and that their government would be liberalized. Certainly the Spanish Government, with its experience of the past, and with the knowledge which it cannot fail to have of the tendencies of the age, can never expect peaceably to maintain the ancient colonial system in those islands. The abuses of that system press heavily upon the numerous educated natives of the same race, and, if not reformed, must be a constant source of bitter antipathy to the mother country. The repeated assurances of the intention of the Government to abolish slavery and to grant liberal reforms in the administration of the island, are admissions by Spain of the wrong of slavery, and of the existence of evils which need reform, but are still allowed on the illogical and indefensible ground that concession cannot be made while resistance continues.

"A nation gives justification to resistance while admitted wrongs remain unredressed; resistance ceases to be justifiable when no wrongs are either admitted or alleged. Redress wrongs and resistance will cease.

"Spain is too great a power to fear to do what she admits to be right, because it is asked vehemently; or because its attainment is sought improperly, she need not apprehend that the reforming of abuses and of wrongs, which she admits to exist, and declares herself ready to correct, will be attributed to an unworthy motive, while delay in removing admitted wrongs which it is within her power to remove places her in a false position, and goes far to justify and to attract sympathy to those who are sufferers from the unredressed wrongs.

"Spain itself has been the scene of civil commotion, but prisoners taken in arms have not been put to death as they are in Cuba, nor have amnesties been regarded as dangerous in the peninsula; why should they be so regarded in the colonies? or why should concessions be dishonorable in Cuba that are not so considered at home? The suggestion that they would be is the offspring of the selfishness of those interested in prolonging the contest for private gain.

"A just, lenient, and humane policy toward Cuba, if it would not bring quiet and order and contentedness, would at least modify the judgment of the world that most of the evils of which Cuba is the scene are the necessary results of harsh treatment, and of the maladministration of the colonial government.

"You are aware that many citizens of the United States, owners of estates in Cuba, have suffered injury by the causeless seizure, in violation of treaty obligations, of those estates, and by the appropriation of their proceeds by those into whose hands they had fallen. Though in some one or two instances the property has been ordered to be restored, so far there has been no indemnification for the damage sustained. In other instances, where restitution has been promised, it has been

evaded and put off in a way which cannot fail to excite the just resentment of the sufferers and of their Government, whose duty it is to protect their interests.

"The decree of 31st August last, prescribing regulations for the proceedings concerning sequestrated property in Cuba, so far as it recognized the embargo or confiscation of the property of those charged with complicity in the insurrection, as a judicial proceeding, in which the parties are entitled to be fairly heard, may be regarded as a concession to the frequent remonstrances of this Government, as well as to the requirements of justice. But, unless the action of the board to be constituted under that decree exhibit a very different measure of promptness and of activity from that which has been given to the remonstrances of this Government against the proceedings whereby the property of citizens of the United States has heretofore been seized, the organization of the board will serve only to increase the very just causes of complaint of this Government. It is hoped that it will not be allowed to become the means or the excuse of further procrastination, or of delaying beyond the extremest limits of patience, which have already been reached, the decision upon the many cases which have been the subject of protracted diplomatic correspondence. There will readily occur to you several cases, which need not be specifically enumerated, which have been referred backward and forward between Madrid and Havana to the very verge of the exhaustion of all patience. In the mean time, the property of citizens of the United States has been held in violation of the treaty between this country and Spain.

"In some of these cases you have been promised the release of the embargo. It is expected that the tardy redress thus promised will not be further delayed by any alleged necessity of reference to this newly constituted board.

"It is hoped that you will present the views above set forth, and the present grievances of which this Government so justly complains, to the Government to which you are accredited, in a way which, without giving offense, will leave a conviction that we are in earnest in the expression of those views, and that we expect redress, and that if it should not soon be afforded Spain must not be surprised to find, as the inevitable result of the delay, a marked change in the feeling and in the temper of the people and of the Government of the United States. Believing that the present ministry of Spain is in a sufficiently confirmed position of power to carry out the measures which it announces, and the reforms which have been promised, and to do justice by the removal of the causes of our well-founded complaints, and not doubting the sincerity of the assurances which have been given, the United States look confidently for the realization of those hopes which have been encouraged by repeated promises that all causes for estrangement, or for the interruption of those friendly feelings which are traditional,

as they are sincere, on the part of this Government toward Spain, will be speedily and forever removed."

Mr. Fish, Sec. of State, to Mr. Sickles, Oct. 29, 1872. MSS. Inst., Spain; For. Rel., 1872.

In 1873 Mr. Fish instructed Mr. Bancroft, then at Berlin, to use his "best endeavors to secure from the German Government such instructions to its minister at Madrid as may enable him to make a simultaneous, if not identical, application to the Spanish Government in support of the desired change," in certain oppressive tariff laws of Cuba subjecting goods on which there are fines to such fines, and not the vessels which import them.

Mr. Fish, Sec. of State, to Mr. Bancroft, Mar. 22, 1873. MSS. Inst., Germ.; For. Rel., 1873.

"Your dispatches No. 670 and 672, of the respective dates of the 27th and 31st July, are not calculated to command confidence in the expectation of a satisfactory settlement of the troubles in which Spain finds herself involved either in respect to her internal or colonial affairs or her relations with other powers. As to the former, we can but sincerely regret that the effort to establish a republican form of government does not give greater promise of success. The United States promptly and cordially extended its recognition and the moral effects of its sympathy to the new Government. It has further manifested its friendly interest by abstaining from insistance in the presentation of complaints on account of the frequent failure of compliance with assurance of intended reforms in the government of Cuba, and of the reparation of wrongs to the persons and property of American citizens.

"Recent information from Havana shows that the decree for the release of embargoed estates had not at a very late date been proclaimed, and that influences seemed to be at work to induce the withholding of the publication and the consequent nullification of the decree. * * *

"The President has heard with deep concern and regret the announcement, said to be made by a member of the ministry of Spain, that no reforms will be granted, and no notice taken of the demands of the insurgents in Cuba, so long as they do not lay down their arms. * * *

"In the interest of Spain, no less than in that of Cuba, in the interest of the United States, in the interest of humanity, the President hopes that such may not be the determination of Spain, and you will not fail to urge upon the ministry the tendency of such policy, and the importance in the direction of pacification, and to the arrest of the further destruction of property and waste of human life, of the disavowal or abandonment of a policy so inconsistent with a possibility of a restoration of peace. * * *

"It is therefore that it appears to us, as friends of Spain, of urgent importance that Spain, in the exercise of her historic wisdom, voluntarily recall the inconsiderate declaration of a minister (if, indeed, it were

made) that the granting of reforms to Cuba will not be entertained while the insurrection lasts, and the President desires that you impress in a friendly and delicate way the paramount importance of action rather than promise in the direction of reforms of which the wisdom of the Government at Madrid have more than once recognized the propriety."

Mr. Fish, Sec. of State, to Mr. Sickles, Aug. 27, 1873. MSS. Inst., Spain; For. Rel., 1873.

"Whatever general instructions you may need at the present time for your guidance in representing this Government at Madrid have reference entirely to the actual state of the Island of Cuba and its relation to the United States as well as to Spain.

"It is now more than five years since an organized body of the inhabitants of that island assembled at Yara, issued a declaration of independence, and took up arms to maintain the declaration. The movement rapidly spread, so as to occupy extensive regions of the eastern and central portions of the island, and all the resources of the Spanish Government have been exerted ineffectually to suppress the revolution and reclaim the districts in insurrection to the authority of Spain. The prosecution of the war on both sides has given rise to many questions, seriously affecting the interests and the honor of the United States, which have become the subject of diplomatic discussion between this Government and that of Spain.

"You will receive herewith a selection, in chronological order, of the numerous dispatches in this relation which have passed between the two Governments. From these documents you will derive ample information, not only respecting special questions which have arisen from time to time, but also respecting the general purposes and policy of the President in the premises.

"Those purposes and that policy, as indicated in the accompanying documents, have continued to be substantially the same during the whole period of these events, except in so far as they may have been modified by special circumstances, seeming to impart greater or less prominence to the various aspects of the general question, and thus, without producing any change of principle, yet, according to the particular emergency, to direct the action of the United States.

"It will suffice, therefore, on the present occasion, first, briefly to state these general views of the President; and, secondly, to show their application to the several incidents of this desperate struggle on the part of the Cubans to acquire independence and of Spain to maintain her sovereignty, in so far as those incidents have immediately affected the United States.

"Cuba is the largest insular possession still retained by any European power in America. It is almost contiguous to the United States. It is pre-eminently fertile in the production of objects of commerce which are of constant demand in this country, and, with just regulations for recip-

rocal interchange of commodities, it would afford a large and lucrative market for the productions of this country. Commercially, as well as geographically, it is by nature more closely connected with the United States than with Spain.

"Civil dissensions in Cuba, and especially sanguinary hostilities, such as are now raging there, produce effects in the United States second in gravity only to those which they produce in Spain.

"Meanwhile our political relation to Cuba is altogether anomalous, seeing that for any injury done to the United States or their citizens in Cuba we have no direct means of redress there, and can obtain it only by slow and circuitous action by way of Madrid. The captain-general of Cuba has, in effect, by the laws of Spain, supreme and absolute authority there for all purposes of wrong to our citizens; but this Government has no adequate means of demanding immediate reparation of such wrongs on the spot, except through a consul, who does not possess diplomatic character, and to whose representations, therefore, the captain-general may, if he choose, absolutely refuse to listen. And, grievous as this inconvenience is to the United States in ordinary times it is more intolerable now, seeing that, as abundantly appears, the contest in Cuba is between peninsular Spaniards on the one hand and native-born Spanish-Americans on the other; the former being the real representatives of Spanish force in Cuba, and exerting that force when they choose, with little, if any, respect for the metropolitan power of Spain. The captain-general is efficient to injure but not to redress, and if disposed to redress, he may be hampered, if not prevented, by resolute opposition on the part of the Spaniards around him, disobedient alike to him and to the supreme Government.

"In fine, Cuba, like the former continental colonies of Spain in America, ought to belong to the great family of American Republics, with political forms and public policy of their own, and attached to Europe by no ties save those of international amity, and of intellectual, commercial, and social intercourse. The desire of independence on the part of the Cubans is a natural and legitimate aspiration of theirs, because they are Americans. And while such independence is the manifest exigency of the political interests of the Cubans themselves, it is equally so that of the rest of America, including the United States.

"That the ultimate issue of events in Cuba will be its independence, however that issue may be produced, whether by means of negotiation, or as the result of military operations or of one of those unexpected incidents which so frequently determine the fate of nations, it is impossible to doubt. If there be one lesson in history more cogent in its teachings than any other, it is that no part of America large enough to constitute a self-sustaining state can be permanently held in forced colonial subjection to Europe. Complete separation between the metropolis and its colony may be postponed by the former conceding to the latter a greater or less degree of local autonomy, nearly approaching to inde-

pendence. But in all cases where a positive antagonism has come to exist between the mother country and its colonial subjects, where the sense of oppression is strongly felt by the latter, and especially where years of relentless warfare have alienated the parties one from another more widely than they are sundered by the ocean itself, their political separation is inevitable. It is one of those conclusions which have been aptly called the inexorable logic of events.

"Entertaining these views, the President at an early day tendered to the Spanish Government the good offices of the United States for the purpose of effecting, by negotiation, the peaceful separation of Cuba from Spain, and thus putting a stop to the further effusion of blood in the island, and relieving both Cuba and Spain from the calamities and charges of a protracted civil war, and of delivering the United States from the constant hazard of inconvenient complications on the side either of Spain or of Cuba. But the well-intended proffers of the United States on that occasion were unwisely rejected by Spain, and, as it was then already foreseen, the struggle has continued in Cuba, with incidents of desperate tenacity on the part of the Cubans, and of angry fierceness on the part of the Spaniards, unparalleled in the annals of modern warfare.

"True it is that now, when the war has raged for more than five years there is no material change in the military situation. The Cubans continue to occupy, unsubdued, the eastern and central parts of the island with exception of the larger cities or towns, and of fortified points held by the Government, but their capacity of resistance appears to be undiminished, and with no abatement of their resolution to persevere to the end in repelling the denomination of Spain.

"Meanwhile this condition of things grows, day by day, more and more insupportable to the United States. The Government is compelled to exert constantly the utmost vigilance to prevent infringement of our law on the part of Cubans purchasing munitions or materials of war or laboring to fit out military expeditions in our ports; we are constrained to maintain a large naval force to prevent violations of our sovereignty, either by the Cubans or the Spaniards; our people are horrified and agitated by the spectacle, at our very doors, of war, not only with all its ordinary attendants of devastation and carnage, but with accompaniments of barbarous shooting of prisoners of war, or their summary execution by military commissions, to the scandal and disgrace of the age; we are under the necessity of interposing continually for the protection of our citizens against wrongful acts of the local authorities of Spain in Cuba; and the public peace is every moment subject to be interrupted by some unforeseen event, like that which recently occurred, to drive us at once to the brink of war with Spain. In short, the state of Cuba is the one great cause of perpetual solicitude in the foreign relations of the United States.

"While the attention of this Government is fixed on Cuba, in the interest of humanity, by the horrors of civil war prevailing there, we cannot forbear to reflect, as well in the interest of humanity as in other relations, that the existence of slave labor in Cuba, and its influence over the feelings and interests of the peninsular Spaniards, lie at the foundation of all the calamities which now afflict the island. Except in Brazil and in Cuba, servitude has almost disappeared from the world. Not in the Spanish-American Republics alone, nor in the British possessions, nor in the United States, nor in Russia, not in those countries alone, but even in Asia, and in Africa herself, the bonds of the slave have been struck off, and personal freedom is the all but universal rule and public law, at least to the nations of Christendom. It cannot long continue in Cuba, environed as that island is by communities of emancipated slaves in the other West India Islands and in the United States.

"Whether it shall be put an end to by the voluntary act of the Spanish Government, by domestic violence, or by the success of the revolution of Yara, or by what other possible means, is one of the grave problems of the situation, of hardly less interest to the United States than the independence of Cuba.

"The President has not been without hope that all these questions might be settled by the spontaneous act of Spain herself, she being more deeply interested in that settlement than all the rest of the world. It seemed for awhile that such a solution was at hand, during the time when the Government of Spain was administered by one of the greatest and wisest of the statesmen of that country, or indeed of Europe, President Castelar. Before attaining power, he had announced a line of policy applicable to Cuba, which, though falling short of the concession of absolute independence, yet was of a nature to command the approbation of the United States.

"'Let us,' he declared, on a memorable occasion, 'let us reduce to formulas our policy in America.

"'First, *the immediate abolition of slavery.*

"'Secondly, autonomy of the islands of Puerto Rico and Cuba, which shall have a parliamentary assembly of their own, their own administration, their own government; and a federal tie to unite them with Spain as Canada is united with England, in order that we may found the liberty of those states and at the same time conserve the national integrity. I desire that the islands of Cuba and Puerto Rico shall be our sisters, and I do not desire that they shall be transatlantic Polands.'

"I repeat that to such a line of policy as this, especially as it relates to Cuba, the United States would make no objection; nay, they could accord to it hearty co-operation and support, as the next best thing to the absolute independence of Cuba.

"Of course the United States would prefer to see all that remains of colonial America pass from that condition to the condition of absolute independence of Europe.

"But we might well accept such a solution of present questions as, while terminating the cruel war which now desolates the island and disturbs our political intercourse, should primarily and at the outset abolish the iniquitous institution of slavery, and, in the second place, should place Cuba practically in the possession of herself by means of political institutions of self-government, and enable her, while nominally subject to Spain, yet to cease to be the victim of Spanish colonial interests, and to be capable of direct and immediate relations of interests and intercourse with the other states of America. * * *

"In these circumstances, the question what decision the United States shall take is a serious and difficult one, not to be determined without careful consideration of its complex elements of domestic and foreign policy, but the determination of which may at any moment be forced upon us by occurrences either in Spain or in Cuba.

"Withal the President cannot but regard *independence*, and emancipation, of course, as the only certain, and even the necessary, solution of the question of Cuba. And, in his mind, all incidental questions are quite subordinate to those, the larger objects of the United States in this respect.

"It requires to be borne in mind that, in so far as we may contribute to the solution of these questions, this Government is not actuated by any selfish or interested motive. The President does not meditate or desire the annexation of Cuba to the United States, but its elevation into an independent Republic of freemen, in harmony with ourselves and with the other Republics of America.

"You will understand, therefore, that the policy of the United States in reference to Cuba at the present time is one of expectancy, but with positive and fixed convictions as to the duty of the United States when the time or emergency of action shall arrive. When it shall arrive, you will receive specific instructions what to do. Meantime, instructed as you now are as to the intimate purposes of the Government, you are to act in conformity therewith in the absence of any specific instructions, and to comport yourself accordingly in all your communications and intercourse, official or unofficial, with persons or public men in Spain.

"In conclusion, it remains to be said that, in accordance with the established policy of the United States in such cases, as exemplified in the many changes of government in France during the last eighty years, and in the Mexican Republic since the time of its first recognition by us, and in other cases which have occurred in Europe and America, you will present your credentials to the persons or authorities whom you may find in the actual exercise of the Executive power of Spain.

"The President has not, as yet, received any official notice of the termination of the authority of President Castelar and the accession of

President Serrano, and, of course, we have no precise information as to the intention or views of the new executive of the Spanish Republic.

"While we cannot expect from him any more hearty friendship for the United States than his predecessor entertained, it is to be hoped that he may not be moved by any unfriendly sentiments toward us. If, however, such should, unhappily, prove to be the case, it would be all the more necessary that you should be vigilantly watchful to detect and report any signs of possible action in Spain to the prejudice of the United States."

Mr. Fish, Sec. of State, to Mr. Cushing; Feb. 6, 1874. MSS. Inst., Spain; For. Rel., 1874.

"The attention of this Government has been frequently called by citizens of the United States to the wrong done them in the embargo of their property by the colonial authorities of Cuba for alleged disloyalty, in virtue of a decree of April 20, 1869. Their estates have been seized by arbitrary executive act, without judicial hearing or judgment, and in manifest violation of the provisions of the treaty of 1795. In many instances the seizure has been made with such improvidence and want of consideration, that the property of one person has been seized for the alleged offense of another. Promises were made, from time to time, to release some of these estates, which promises were evaded or deferred for insufficient reasons. In some cases, after promise had been given to disembargo the property, it was leased to strangers for a series of years, so as to render the order of disembargo ineffectual, and to continue to deprive the owner of the possession and use of his property.

"Of course, no relief in the premises could be obtained by the action of the Mixed Commission sitting at Washington, and this Department continually insisted that the property itself should be restored to the owners by the same executive authority which made the seizure, leaving only the question of resulting damages to the consideration of the Commission.

"You are referred to the frequent and earnest instructions to your predecessor with regard to these cases. After various repeated and urgent remonstrances, the late Government of Spain, on the 12th of July, 1873, on the recommendation of the minister of the colonies, setting forth the illegality of these acts of sequestration, their injustice to the parties interested, and their injuriousness even to the public interests, all embargoes put upon the property of alleged disloyal persons in Cuba were declared removed from the date when the decree should reach the capital; it was ordered that all property disembargoed should be forthwith delivered up to its owners or their legal representatives; and a commission was appointed to hear and decide summarily upon all such applications as might be made by the interested parties.

"Notwithstanding the imperative character of this decree, no regard was paid to it in Cuba for a length of time; it was not officially pub-

lished there, and the authorities at Havana even proceeded to advertise for sale embargoed property belonging to citizens of the United States. These instances led to further remonstrances on the part of the United States.

"At length, contemporaneously with the official visit of Señor Soler y Pla, minister of ultramar, to Cuba, partial execution was given to the decree of July 12, 1873, in so far as it applied to several of the parties named in a list communicated to the Spanish Government by this Department.

"It is now learned that in the case of some of the estates covered by that decree, and ordered by the commission to be delivered to the owners, delivery is obstructed on the allegation that the estates are subject to leases to third parties for a series of years, by which the owners are not only deprived of the actual possession of their property, and of the income which it would yield in their hands, but the property itself is undergoing waste and depreciation.

"The leases which are thus interposed as a justification for continuing to disregard the decree of the home Government and the assurances given to this Government, and in continued violation of the rights of our citizens, are understood to be leases given by some pretended authority subsequent to the act of embargo.

"In some cases (that of Ramon Fernandez Criado y Gomez, for instance), it appears that the authorities claim that the property was under judicial embargo and finally confiscated.

"The chronological series of papers which accompany my No. 2, of even date with this, contain copies of the correspondence, telegraphic and otherwise, on this subject between this Department and its agents and the Spanish authorities. On examining it, you will find that the Spanish Government has practically admitted that the seizure and retention of these estates was a violation of the rights of the proprietors.

"You will therefore make it your first duty after your credentials are presented in Madrid, to represent to the Government there, courteously but firmly, that the President expects to see the estates of American citizens which have been seized in Cuba in violation of the provisions of the treaty of 1795, whether by embargo or by confiscation, restored to them without further delay, and without any incumbrance imposed by Spanish authority in Cuba.

"He does not question the willingness of the authorities at Madrid to comply with these expectations. It will be your duty, while giving assurances of our convictions of the good-will of the Spanish Government in this respect, to leave no doubt of our expectations that it will find means to compel its insubordinate agents in Cuba to carry into execution its agreements with this Government respecting these estates."

Mr. Fish, Sec. of State, to Mr. Cushing, Feb. 6, 1874. MSS. Inst., Spain; For. Rel., 1874.

"The deplorable strife in Cuba continues without any marked change in the relative advantages of the contending forces. The insurrection continues, but Spain has gained no superiority. Six years of strife give to the insurrection a significance which cannot be denied. Its duration and the tenacity of its adherence, together with the absence of manifested power of suppression on the part of Spain, cannot be controverted, and may make some positive steps on the part of other powers a matter of self-necessity. I had confidently hoped at this time to be able to announce the arrangement of some of the important questions between this Government and that of Spain, but the negotiations have been protracted. The unhappy intestine dissensions of Spain command our profound sympathy, and must be accepted as perhaps a cause of some delay. An early settlement, in part at least, of the questions between the Governments is hoped. In the mean time, awaiting the results of immediately pending negotiations, I defer a further and fuller communication on the subject of the relations of this country and Spain."

President Grant, Sixth Annual Message, 1874.

"The Government of Great Britain may possibly, of its own accord, think proper, in view of its own interests, to co-operate with the United States in this effort to arrest a cruel war of devastation. This, however, is a question to be raised by Her Majesty's Government. Humanity, its own great interests, and a regard for the preservation of the peace of the world, it is believed, will, without doubt, lead it to support the position which this Government has at length been forced to assume, and to address its representatives in Madrid to that end."

Mr. Fish, Sec. of State, to Mr. Schenck, Nov. 5, 1875. MSS. Inst., Gr. Brit.

"You will read this instruction, 266, or state orally the substance thereof, to the minister of foreign affairs confidentially (but will not give a copy thereof), and will assure him of the sincere and earnest desire of the President for a termination of the disastrous conflict in Cuba by the spontaneous action of Spain, or by the agreement of the parties thereto.

"You will further state that the President is of opinion that should the Government to which you are accredited find it consistent with its views to urge upon Spain the importance and necessity of either terminating or abandoning this contest, which now after a continuance of seven years has not advanced toward a prospect of success on either side, but which is characterized by cruelties, by violations of the rules of civilized modern warfare, by pillage, desolation, and wanton incendiarism, threatening the industry, capacity, and production of an extended and fertile country, the friendly expression of such views to Spain might lead that Government to a dispassionate consideration of the hopelessness of the contest, and tend to the earlier restoration of peace and prosperity to Cuba, if not to the preservation of the peace of the world.

"Such a course on the part of the Government to which you are accredited would be exceedingly satisfactory to the United States, and, in the opinion of the President, conducive to the interests of every commercial nation and of humanity itself."

Mr. Fish, Sec. of State, to Mr. Orth, Nov. 15, 1875. MSS. Inst., Austria.

"Read inclosure to 805 as soon as opportunity will admit. You will explain that intervention is not contemplated as an immediate resort, but as a contingent necessity in case the contest be prosecuted and satisfactory adjustment of existing griefs be not reached, and that we sincerely desire to avoid any rupture, and are anxious to maintain peace and establish our relations with Spain on a permanent basis of friendship. I now state, further, for your own information and for your guidance in your interview with minister, that message will discountenance recognition of belligerency or independence; will allude to intervention as a possible necessity, but will not advise its present adoption. Cushing is instructed to communicate to minister without waiting result of your interview, but you will communicate with him, in cipher, after your interview."

Mr. Fish, Sec. of State, to Mr. Schenck, Nov. 27, 1875. (Telegram), MSS. Inst., Gr. Brit.

"The past year has furnished no evidence of an approaching termination of the ruinous conflict which has been raging for seven years in the neighboring Island of Cuba. The same disregard of the laws of civilized warfare and of the just demands of humanity which has heretofore called forth expressions of condemnation from the nations of Christendom has continued to blacken the sad scene. Desolation, ruin, and pillage are pervading the rich fields of one of the most fertile and productive regions of the earth, and the incendiary's torch, firing plantations and valuable factories and buildings, is the agent marking the alternate advance or retreat of contending parties.

"The protracted continuance of this strife seriously affects the interests of all commercial nations, but those of the United States more than others, by reason of close proximity, its larger trade and intercourse with Cuba, and the frequent and intimate personal and social relations which have grown up between its citizens and those of the island. Moreover, the property of our citizens in Cuba is large, and is rendered insecure and depreciated in value and in capacity of production by the continuance of the strife and the unnatural mode of its conduct. The same is true, differing only in degree, with respect to the interests and people of other nations; and the absence of any reasonable assurance of a near termination of the conflict must, of necessity, soon compel the states thus suffering to consider what the interests of their own people and their duty toward themselves may demand.

"I have hoped that Spain would be enabled to establish peace in her colony, to afford security to the property and the interests of our citizens, and allow legitimate scope to trade and commerce and the natural

productions of the island. Because of this hope, and of an extreme reluctance to interfere in the most remote manner in the affairs of another and friendly nation, especially of one whose sympathy and friendship in the struggling infancy of our own existence must ever be remembered with gratitude, I have patiently and anxiously waited the progress of events. Our own civil conflict is too recent for us not to consider the difficulties which surround a Government distracted by a dynastic rebellion at home, at the same time that it has to cope with a separate insurrection in a distant colony. But whatever causes may have produced the situation which so grievously affects our interests, it exists, with all its attendant evils operating directly upon this country and its people. Thus far all the efforts of Spain have proved abortive, and time has marked no improvement in the situation. The armed bands of either side now occupy nearly the same ground as in the past, with the difference, from time to time, of more lives sacrificed, more property destroyed, and wider extents of fertile and productive fields and more and more of valuable property constantly wantonly sacrificed to the incendiary's torch.

"In contests of this nature, where a considerable body of people, who have attempted to free themselves of the control of the superior Government, have reached such point in occupation of territory, in power, and in general organization as to constitute in fact a body-politic, having a government in substance as well as in name, possessed of the elements of stability, and equipped with the machinery for the administration of internal policy and the execution of its laws, prepared and able to administer justice at home, as well as in its dealings with other powers, it is within the province of those other powers to recognize its existence as a new and independent nation. In such cases other nations simply deal with an actually existing condition of things, and recognize as one of the powers of the earth that body-politic which, possessing the necessary elements, has, in fact, become a new power. In a word the creation of a new state is a fact.

"To establish the condition of things essential to the recognition of this fact, there must be a people occupying a known territory, united under some known and defined form of government, acknowledged by those subject thereto, in which the functions of government are administered by usual methods, competent to mete out justice to citizens and strangers, to afford remedies for public and for private wrongs, and able to assume the correlative international obligations, and capable of performing the corresponding international duties resulting from its acquisition of the rights of sovereignty. A power should exist complete in its organization, ready to take and able to maintain its place among the nations of the earth.

"While conscious that the insurrection in Cuba has shown a strength and endurance which make it at least doubtful whether it be in the power of Spain to subdue it, it seems unquestionable that no such civil

organization exists which may be recognized as an indepen
ment capable of performing its international obligations an
be treated as one of the powers of the earth. A recognitio
circumstances would be inconsistent with the facts, and w
the power granting it soon to support by force the governm
it had really given its only claim of existence. In my ju
United States should adhere to the policy and the principle
heretofore been its sure and safe guides in like contests
volted colonies and their mother country, and, acting on
clearest evidence, should avoid any possibility of suspicion
tation.

"A recognition of the independence of Cuba being, in
impracticable and indefensible, the question which next pr
is that of the recognition of belligerent rights in the partie
test.

"In a former message to Congress I had occasion to c
question, and reached the conclusion that the conflict in Cu
and devastating as were its incidents, did not rise to the fe
of war. Regarding it now, after this lapse of time, I am u
that any notable success, or any marked or real advance o
the insurgents, has essentially changed the character of the
has acquired greater age, but not greater or more formid
tions. It is possible that the acts of foreign powers, and
Spain herself, of this very nature, might be pointed to in de
recognition. But now, as in its past history, the United S
carefully avoid the false lights which might lead it into t
doubtful law and of questionable propriety, and adhere
sternly to the rule, which has been its guide, of doin
which is right and honest and of good report. The questi
ing or of withholding rights of belligerency must be judg
case, in view of the particular attending facts. Unless
necessity, it is always, and justly, regarded as an unfrien
a gratuitous demonstration of moral support to the rebe
necessary, and it is required, when the interests and right
Government or of its people are so far affected by a pendi
flict as to require a definition of its relations to the par
But this conflict must be one which will be recognized in
international law as war. Belligerence, too, is a fact. Th
ence of contending armed bodies, and their occasional con
constitute war in the sense referred to. Applying to the
dition of affairs in Cuba the test recognized by publicists
on international law, and which have been observed by na
nity, honesty, and power, when free from sensitive or sel
worthy motives, I fail to find in the insurrection the exist
a substantial political organization, real, palpable, and ma
world, having the forms and capable of the ordinary funct

ernment toward its own people and to other states, with courts for the administration of justice, with a local habitation, possessing such organization of force, such material, such occupation of territory, as to take the contest out of the category of a mere rebellious insurrection, or occasional skirmishes, and place it on the terrible footing of war, to which a recognition of belligerency would aim to elevate it. The contest, moreover, is solely on land; the insurrection has not possessed itself of a single sea-port whence it may send forth its flag, nor has it any means of communication with foreign powers except through the military lines of its adversaries. No apprehension of any of those sudden and difficult complications which a war upon the ocean is apt to precipitate upon the vessels, both commercial and national, and upon the consular officers of other powers, calls for the definition of their relations to the parties to the contest. Considered as a question of expediency, I regard the accordance of belligerent rights still to be as unwise and premature, as I regard it to be, at present, indefensible as a measure of right. Such recognition entails upon the country according the rights which flow from it difficult and complicated duties, and requires the exaction from the contending parties of the strict observance of their rights and obligations. It confers the right of search upon the high seas by vessels of both parties; it would subject the carrying of arms and munitions of war, which now may be transported freely and without interruption in the vessels of the United States, to detention and to possible seizure; it would give rise to countless vexatious questions, would release the parent Government from responsibility for acts done by the insurgents, and would invest Spain with the right to exercise the supervision recognized by our treaty of 1795 over our commerce on the high seas, a very large part of which, in its traffic, between the Atlantic and the Gulf States, and between all of them and the States on the Pacific, passes through the waters which wash the shores of Cuba. The exercise of this supervision could scarce fail to lead, if not to abuses, certainly to collisions perilous to the peaceful relations of the two states. There can be little doubt to what result such supervision would before long draw this nation. It would be unworthy of the United States to inaugurate the possibility of such result, by measures of questionable right or expediency, or by any indirection. Apart from any question of theoretical right, I am satisfied that, while the accordance of belligerent rights to the insurgents in Cuba might give them a hope, and an inducement to protract the struggle, it would be but a delusive hope, and would not remove the evils which this Government and its people are experiencing, but would draw the United States into complications which it has waited long and already suffered much to avoid. The recognition of independence or of belligerency being thus, in my judgment, equally inadmissible, it remains to consider what course shall be adopted should the conflict not soon be brought to an end by acts of the parties them-

selves, and should the evils which result therefrom, affecting all nations, and particularly the United States, continue.

"In such event, I am of opinion that other nations will be compelled to assume the responsibility which devolves upon them, and to seriously consider the only remaining measures possible, mediation and intervention. Owing, perhaps, to the large expanse of water separating the island from the peninsula, the want of harmony and of personal sympathy between the inhabitants of the colony and those sent thither to rule them, and want of adaptation of the ancient colonial system of Europe to the present times and to the ideas which the events of the past century have developed, the contending parties appear to have within themselves no depository of common confidence to suggest wisdom when passion and excitement have their sway, and to assume the part of peace-maker. In this view, in the earlier days of the contest the good offices of the United States as a mediator were tendered in good faith, without any selfish purpose, in the interest of humanity and in sincere friendship for both parties, but were at the time declined by Spain, with the declaration, nevertheless, that at a future time they would be indispensable. No intimation has has been received that in the opinion of Spain that time has been reached. And yet the strife continues, with all its dread horrors, and all its injuries to the interests of the United States and of other nations. Each party seems quite capable of working great injury and damage to the other, as well as to all the relations and interests dependent on the existence of peace in the island; but they seem incapable of reaching any adjustment, and both have thus far failed of achieving any success whereby one party shall possess and control the island to the exclusion of the other. Under these circumstances, the agency of others, either by mediation or by intervention, seems to be the only alternative which must, sooner or later, be invoked for the termination of the strife. At the same time, while thus impressed, I do not at this time recommend the adoption of any measure of intervention. I shall be ready at all times, and as the equal friend of both parties, to respond to a suggestion that the good offices of the United States will be acceptable to aid in bringing about a peace honorable to both. It is due to Spain, so far as this Government is concerned, that the agency of a third power, to which I have adverted, shall be adopted only as a last expedient. Had it been the desire of the United States to interfere in the affairs of Cuba, repeated opportunities for so doing have been presented within the last few years; but we have remained passive, and have performed our whole duty and all international obligations to Spain with friendship, fairness, and fidelity, and with a spirit of patience and forbearance which negatives every possible suggestion of desire to interfere or to add to the difficulties with which she has been surrounded.

"The Government of Spain has recently submitted to our minister at Madrid certain proposals which, it is hoped, may be found to be the

basis, if not the actual submission, of terms to meet the requirements of the particular griefs of which this Government has felt itself entitled to complain. These proposals have not yet reached me in their full text. On their arrival they will be taken into careful examination, and may, I hope, lead to a satisfactory adjustment of the questions to which they refer, and remove the possibility of future occurrences, such as have given rise to our just complaints.

"It is understood also that renewed efforts are being made to introduce reforms in the internal administration of the island. Persuaded, however, that a proper regard for the interests of the United States and of its citizens entitle it to relief from the strain to which it has been subjected by the difficulties of the questions and the wrongs and losses which arise from the contest in Cuba, and that the interests of humanity itself demand the cessation of the strife before the whole island shall be laid waste and larger sacrifices of life be made, I shall feel it my duty, should my hopes of a satisfactory adjustment and of the early restoration of peace and the removal of future causes of complaint be unhappily disappointed, to make a further communication to Congress at some period not far remote, and during the present session, recommending what may then seem to me to be necessary."

President Grant, Seventh Annual Message, 1875.

"It is proper to state, in this connection, that Instruction 266 was brought to the attention of the Governments of France, Germany, Russia, Italy, and Austria, although not precisely in the same terms in which it was communicated to the Government of Great Britain, and the suggestion was made that should these Governments, in view of the statements in Instruction 266, which had been communicated to the Spanish Government, see fit to urge upon Spain the necessity of abandoning or terminating the contest in Cuba, such course would be satisfactory to this Government, and conducive to the interests of all commercial nations.

"Information has been received by telegraph that Germany, Russia, and Italy have instructed their representatives at Madrid to urge upon the Spanish Government the wisdom of restoring peace to Cuba.

"You will also perceive, from Mr. Hitt's dispatch, that the Duke Decazes contemplated consulting the Government of Great Britain before deciding on the course which France should adopt. The Department is not advised whether any such conference has been had, nor as to the conclusion which the Duke Decazes may have reached. An instruction has, however, been addressed to Mr. Hitt, on that subject.

"It is proper also to say that the note of the 15th of November, from the minister of foreign affairs of Spain, in reference to the particular reclamations of the United States, while it holds out hopes of an adjustment of our particular griefs, at the same time makes it neces-

sary to obtain information on several points, and renders consider delay in reaching any conclusion necessary.

"Under these circumstances, and as certain of the European G ernments have issued instructions to their representatives on the q tion, it is hoped that no misapprehension exists on the part of the E ish Government to delay instructions which it may be willing to g as suggested in my No. 805 to you, supporting the views of this G ernment as to the necessity of ending the contest in Cuba."

Mr. Fish, Sec. of State, to Mr. Schenck, Jan. 11, 1876. MSS. Inst., Gr. Br

The expression to Spain by the United States, in connection v other powers, of a desire that the civil war in Cuba should be brou to a close, without, however, taking any decided steps of interfere it being understood that the United States "neither sought nor des any physical force or pressure, but simply the moral influence of c currence of opinion as to the protraction of the contest," is not inc sistent with the traditions of the United States.

Mr. Fish, Sec. of State, to Mr. Davis, Jan. 20, 1876. MSS. Inst., Germ. See joint interposition in South American wars, Mr. Evarts, Sec. of State, to White, July, 1879, *ibid.* And see *infra*, §§ 72, 102.

As to suggestions to Spain in reference to restoration of order and prospe in Cuba, see Mr. Fish, Sec. of State, to Mr. Cushing, Mar. 1, 1876. Inst., Spain.

As to United States intervention in Cuba, see same to same, Mar. 22, 1876,

"Another year has passed without bringing to a close the protrac contest between the Spanish Government and the insurrection in Island of Cuba. While the United States have sedulously abstai from any intervention in this contest, it is impossible not to feel tha is attended with incidents affecting the rights and interests of Americ citizens. Apart from the effect of the hostilities upon trade betw the United States and Cuba, their progress is inevitably accompan by complaints, having more or less foundation, of searches, arrests, e bargoes, and oppressive taxes upon the property of American residen and of unprovoked interference with American vessels and commer It is due to the Government of Spain to say that during the past y it has promptly disavowed and offered reparation for any unauthori acts of unduly zealous subordinates whenever such acts have b brought to its attention. Nevertheless, such occurrences cannot l tend to excite feelings of annoyance, suspicion, and resentment, wh are greatly to be deprecated, between the respective subjects and c zens of two friendly powers."

President Hayes, First Annual Message, 1877.

"This Government has more than once been called upon of late take action in fulfillment of its international obligations toward Sp Agitation in the Island of Cuba hostile to the Spanish Crown hav been fomented by persons abusing the sacred rights of hospitality wh

our territory affords, the officers of this Government have been instructed to exercise vigilance to prevent infractions of our neutrality laws at Key West and at other points near the Cuban coast. I am happy to say that in the only instance where these precautionary measures were successfully eluded, the offenders, when found in our territory, were subsequently tried and convicted."

President Arthur, Fourth Annual Message, 1884.

The following citations are taken from the list of papers concerning foreign relations attached to the register of the Department of State:

Neutrality between Spain and Cuba. Resolution requesting the President to issue a neutrality proclamation containing the same provisions as that issued by Spain in 1861 on the occasion of the outbreak of the civil war in United States. January 10, 1876. (S. Mis. Doc. 29, Forty-fourth Congress, first session.)

Intervention of foreign powers proposed by the United States to restore order in Cuba; condition of affairs in; correspondence respecting the trial of General Juan Burriel for the massacre of the passengers and crew of the Virginius. President's message. January 21, 1876. (H. Ex. Doc. 90, Forty-fourth Congress, first session.) As to the Virginius, see *infra*, § 327.

Cuban insurrection. Terms and conditions upon which the surrender of the insurgents has been made. President's message. May 14, 1878. (S. Ex. Doc. 79. Forty-fifth Congress, second session.)

Certain diplomatic correspondence with Spain in 1876, in cases of citizens of the United States condemned to death in Cuba. President's message. May 3, 1882. (S. Ex. Doc. 165, Forty-seventh Congress, first session.)

Cuba and Porto Rico. Discriminating duties on commerce between the United States and. President's message, transmitting report from the Secretary of State. January 15, 1884. (S. Ex. Doc. 58, Forty-eighth Congress, first session.)—January 30, 1884. Part 2, additional papers.

An elaborate exposition of the relations of the United States to Cuba down to 1868, is given in Mr. W. B. Lawrence's Com. sur droit int., ii, 316 *ff*.

(4) San Domingo and Hayti.

§ 61.

"It is not deemed unreasonable on the part of the Government of Hayti that it should ask leading maritime states to guarantee their sovereignty over Samana. The Government of Hayti very properly consults the United States Government with reference to such a guarantee. The President is gratified also that the Haytian Government has submitted its views in a proper spirit to Great Britain. Nevertheless, the question unavoidably calls up that ancient and settled policy of the United States which disinclines them to the constituting of political alliances with foreign states, and especially disinclines them to engagements with foreign states in regard to subjects which do not fall within the range of necessary and immediate domestic legislation. This policy would oblige the United States to refrain from making such a guarantee as Hayti desires, but disclaiming for themselves all purpose or desire

to disturb the peace and security of Hayti, the United States would be gratified if Great Britain and other maritime states should see fit to regard the wish of the Government of Hayti in the same spirit of justice and magnanimity."

Mr. Seward, Sec of State, to Mr. Bruce, Aug. 15, 1865. MSS. Notes, Gr. Brit.

It is against the policy of the United States to interfere in contests between the titular Government of Hayti and insurgents.

Mr. Fish, Sec. of State, to Mr. Bassett, Oct. 13, 1869. MSS. Inst., Hayti. Same to same, Mar. 26, 1873. See Mr. Bayard, Sec. of State, to Mr. Roberts, Aug. 21, 1885. MSS. Inst., Chili.

"During the last session of Congress a treaty for the annexation of the Republic of San Domingo to the United States failed to receive the requisite two-thirds vote of the Senate. I was thoroughly convinced then that the best interests of this country, commercially and materially, demanded its ratification. Time has only confirmed me in this view. I now firmly believe that the moment it is known that the United States have entirely abandoned the project of accepting, as a part of its territory, the island of San Domingo, a free port will be negotiated for by European nations in the Bay of Samana. A large commercial city will spring up, to which we will be tributary without receiving corresponding benefits, and then will be seen the folly of our rejecting so great a prize. The Government of San Domingo has voluntarily sought this annexation. It is a weak power, numbering probably less than 120,000 souls, and yet possessing one of the richest territories under the sun, capable of supporting a population of 10,000,000 of people in luxury. The people of San Domingo are not capable of maintaining themselves in their present condition, and must look for outside support. They yearn for the protection of our free institutions and laws—our progress and civilization. Shall we refuse them?

"The acquisition of San Domingo is desirable because of its geographical position. It commands the entrance to the Caribbean Sea and the Isthmus transit of commerce. It possesses the richest soil, best and most capacious harbors, most salubrious climate, and the most valuable products of the forest, mine, and soil of any of the West India Islands. Its possession by us will in a few years build up a coastwise commerce of immense magnitude, which will go far toward restoring to us our lost merchant marine. It will give to us those articles which we consume so largely and do not produce, thus equalizing our exports and imports. In case of foreign war it will give us command of all the islands referred to, and thus prevent an enemy from ever again possessing himself of rendezvous upon our very coast. At present our coast trade between the States bordering on the Atlantic and those bordering on the Gulf of Mexico is cut into by the Bahamas and the Antilles. Twice we must, as it were, pass through foreign countries to get by sea from Georgia to the west coast of Florida.

"San Domingo, with a stable Government under which her immense resources can be developed, will give remunerative wages to tens of thousands of laborers not now upon the island. This labor will take advantage of every available means of transportation to abandon the adjacent islands and seek the blessings of freedom and its sequence—each inhabitant receiving the reward of his own labor. Porto Rico and Cuba will have to abolish slavery, as a measure of self-preservation, to retain their laborers.

"San Domingo will become a large consumer of the products of Northern farms and manufactories. The cheap rate at which her citizens can be furnished with food, tools, and machinery will make it necessary that contiguous islands should have the same advantages in order to compete in the production of sugar, coffee, tobacco, tropical fruits, &c. This will open to us a still wider market for our products. The production of our own supply of these articles will cut off more than one hundred millions of our annual imports, besides largely increasing our exports. With such a picture it is easy to see how our large debt abroad is ultimately to be extinguished. With a balance of trade against us (including interest on bonds held by foreigners and money spent by our citizens traveling in foreign lands) equal to the entire yield of the precious metals in this country, it is not so easy to see how this result is to be otherwise accomplished.

"The acquisition of San Domingo is an adherence to the 'Monroe doctrine'; it is a measure of national protection; it is asserting our just claim to a controlling influence over the great commercial traffic soon to flow from west to east by way of the Isthmus of Darien; it is to build up our merchant marine; it is to furnish new markets for the products of our farms, shops, and manufactories; it is to make slavery insupportable in Cuba and Porto Rico at once, and ultimately so in Brazil; it is to settle the unhappy condition of Cuba and end an exterminating conflict; it is to provide honest means of paying our honest debts without overtaxing the people; it is to furnish our citizens with the necessaries of every-day life at cheaper rates than ever before; and it is, in fine, a rapid stride toward that greatness which the intelligence, industry, and enterprise of the citizens of the United States entitle this country to assume among nations.

"In view of the importance of this question, I earnestly urge upon Congress early action expressive of its views as to the best means of acquiring San Domingo. My suggestion is that, by joint resolution of the two houses of Congress, the Executive be authorized to appoint a commission to negotiate a treaty with the authorities of San Domingo for the acquisition of that island, and that an appropriation be made to defray the expenses of such commission. The question may then be determined, either by the action of the Senate upon the treaty, or the joint action of the two houses of Congress upon a resolution of annexation, as in the case of the acquisition of Texas. So convinced am I of the

advantages to flow from the acquisition of San Domingo, and of the great disadvantages—I might almost say calamities—to flow from non-acquisition, that I believe the subject has only to be investigated to be approved."

President Grant, Second Annual Message, 1870.

According to Mr. Blaine (2 Twenty Years in Congress, 458, 461), the negotiation for the annexation of the Dominican Republic was opened at the request of the authorities of San Domingo, and it began about three months after the President's inauguration. "In July General O. E. Babcock, one of the President's private secretaries, was dispatched to San Domingo upon an errand of which the public knew nothing. He bore a letter of instructions from Secretary Fish, apparently limiting the mission to an inquiry into the condition, prospects, and resources of the island. From its tenor the negotiation of a treaty was not at that time anticipated by the State Department. General Babcock's mission finally resulted, however, in a treaty for the annexation of the Republic of Dominica, and a convention for the lease of the bay and peninsula of Samana—separately negotiated, and both concluded on the 29th of November, 1869. The territory included in the Dominican Republic is the eastern portion of the island of San Domingo, originally known as Hispaniola. It embraces, perhaps, two-thirds of the whole. The western part forms the Republic of Hayti. With the exception of Cuba, the island is the largest of the West India group. The total area is about 28,000 square miles—equivalent to Massachusetts, New Hampshire, Vermont, and Rhode Island combined. President Grant placed extravagant estimates upon the value of the territory which he supposed was now acquired under the Babcock treaties. In his message to Congress he expressed the belief that the island would yield to the United States all the sugar, coffee, tobacco, and other tropical products which the country would consume. 'The production of our supply of these articles' said the President, 'will cut off more than $100,000,000 of our annual imports, besides largely increasing our exports.' * * * 'It is easy' he went on to say, 'to see how our large debt abroad (after such an annexation) is ultimately to be extinguished.' He maintained that 'the acquisition of San Domingo will furnish our citizens with the necessaries of every-day life at cheaper rates than ever before, and it is in fine a rapid stride towards that greatness which the intelligence, industry, and enterprise of our citizens entitle this country to assume among nations.'"

The treaty was rejected by the Senate by a vote of 28 to 28. This, however, did not cause the withdrawal of the projects by the President. In his annual message of the succeeding December he reiterated his belief in terms quoted above.

"The subject," so Mr. Blaine states, "at once led to discussion in both branches of Congress, in which the hostility to the scheme on the part of some leading men assumed the tone of personal exasperation towards General Grant. So intense was the opposition that the President's friends in the Senate did not deem it prudent even to discuss the measure which he recommended. As the best that could be done, Mr. Morton, of Indiana, introduced a resolution empowering the President to appoint three commissioners to proceed to San Domingo and make certain inquiries into the political condition of the island, and also into its agricultural and commercial value. The commissioners were to have no compensation. Their expenses were to be paid, and a secretary was to be provided. Even in

this mild shape, the resolution was hotly opposed. It was finally adopted by the Senate, but when it reached the House, that body refused to concur, except with a proviso that nothing in this resolution shall be held, understood, or construed as committing Congress to the policy of annexing San Domingo. The Senate concurred in the condition thus attached, and the President approved it. It was plain that the President could not carry the annexation scheme, but he courted a searching investigation in order that the course he had pursued might be vindicated by the well considered judgment of impartial men. The President's selections for the commission were wisely made. Benjamin F. Wade, of Ohio, Andrew D. White, of New York, and Samuel G. Howe, of Massachusetts, were men entitled to the highest respect, and their conclusions, based on intelligent investigation, would exert large influence upon public opinion. The commission at once visited the island (carried thither on a United States vessel of war), made a thorough examination of all its resources, held conferences with its leading citizens, and concluded that the policy recommended by General Grant should be sustained. The commissioners corroborated General Grant's assertion that the island could supply the United States with sugar, coffee, and other tropical products needed for our consumption; and they upheld the President in his belief that the possession of the island by the United States would by the laws of trade make slave labor in the neighboring islands unprofitable, and render the whole slave and caste systems odious. In communicating the report, the President made some remarks which had a personal bearing. 'The mere rejection by the Senate of a treaty negotiated by the President,' said he, 'only indicates a difference of opinion among different departments of the Government, without touching the character or wounding the pride of either. But when such rejection takes place simultaneously with the charges openly made of corruption on the part of the President, or of those employed by him, the case is different. Indeed, in such case, the honor of the nation demands investigation. This has been accomplished by the report of the commissioners, herewith transmitted, and which fully vindicates the purity of motives and action of those who represented the United States in the negotiation. And now my task is finished, and with it ends all personal solicitude on the subject. My duty being done, yours begins, and I gladly hand over the whole matter to the judgment of the American people, and of their representatives in Congress assembled.' The pointed remarks of the President were understood as referring to the speech made by Mr. Sumner when the resolution for the appointment of the commission was pending before the Senate. * * * No further attempt was made by the President to urge the acquisition of San Domingo upon Congress. It was evident that neither the Senate nor House could be induced to approve the scheme, and the Administration was necessarily compelled to abandon it. But defeat did not change General Grant's view of the question. He held to his belief in its expediency and value with characteristic tenacity.

"In his last annual message to Congress (December, 1876), nearly six years after the controversy had closed, he recurred to the subject, to record once more his approval of it. 'If my view,' said he, 'had been concurred in, the country would be in a more prosperous condition today, both politically and financially.' He then proceeded to restate the question, and to sustain it with the arguments which he had presented to Congress in 1870 and 1871. His last words were, 'I do not present

these views now as a recommendation for a renewal of the subject of annexation, but I do refer to it to vindicate my previous action in respect to it.'"

As to convention with Dominican Republic for lease of peninsula and bay of Samana, see Mr. Seward, Sec. of State, to Mr. Pujol, Jan. 10, 1868. MSS. Notes, Dom. Rep. Same to same, Jan. 20, 1868, Jan. 28, 1868. Mr. Evarts, Sec. of State, to Mr. Delmonte, Feb. 19, 1880, *ibid.*

Senate Ex. Doc. No. 34, 41st Cong., 3d sess., gives President Grant's message of Feb. 7, 1871, forwarding correspondence in respect to the prior negotiations as to San Domingo.

The message of President Grant of Apr. 5, 1871, communicating the report of the commission of inquiry to the island of San Domingo, is given in Senate Ex. Doc. No. 9, 42d Cong., 2d sess. See also Senate Ex. Doc. No. 35, 42d Cong., 1st sess. Other papers relative to such annexation are in Senate Ex. Doc. No. 17, 41st Cong., 3d sess.; House Ex. Doc. No. 42, 41st Cong., 3d sess.

As to relations to Hayti, see App., Vol. III, § 61.

(5) Danish West Indies.

§ 61a.

There is no printed executive summary of the negotiations for the Danish West Indies.

So far as can be learned from the archives of this Department, negotiations were commenced by Mr. Seward, Secretary of State, on July 17, 1866, by a note to the Danish minister, General Raasloff, offering $5,000,000 gold for the three islands to be delivered, with all fixed public property therein, without conditions or incumbrances. General Raasloff having shortly afterwards returned to Denmark to accept the ministry of war, the negotiations were transferred to Copenhagen, where they were conducted by Mr. Yeaman, our minister there, on our part, and for the Danish Government, by Count Frijs, minister of foreign affairs, and General Raasloff. No counter-proposal was made until May 17, 1867, by the Danish Government. Then Count Frijs told Mr. Yeaman that Denmark expected $15,000,000 gold for the three islands, and that it would not cede them without the consent of the inhabitants; but that as his Government could not dispose of Santa Cruz without the consent of France, he was willing to cede St. Thomas and St. John for $.0,000,000 gold, and to treat separately as to Santa Cruz.

On May 27, 1867, Mr. Seward sent Mr. Yeaman the draft of a convention such as he desired. In it he offered $7,500,000 for the three islands on the conditions above stated. And in addition he instructed Mr. Yeaman that in no case was a stipulation for the consent of the inhabitants to be inserted in the convention; that permission would be granted them to leave the island at any time within two years after the United States took possession of it, if they preferred their original allegiance to that of the United States; and that the convention must be ratified on or before August 4, 1867.

These terms not proving acceptable to Denmark, the negotiations were prolonged until finally Mr. Seward gave up the attempt to fix the date of ratification, concurred in a stipulation in the convention for the consent of the inhabitants, and offered $7,500,000 for St. Thomas and St. John.

On this basis a treaty was concluded on October 25, 1867. This was promptly ratified by Denmark, but the United States Senate delayed

action on it, and in the session of 1868, after an adverse report, it was dropped.

As to negotiations for cession to the United States of the Danish West India Islands, see more fully Mr. Seward, Sec. of State, to Mr. Yeaman, May 27, 1867; Sept. 23, 1867 *ff.* MSS. Inst., Denmark.

"Denmark had no particular desire to sell to the United States, but was persuaded to do so. The inhabitants of the islands had already voted to accept the United States as their sovereign. The late Mr. Charles Sumner, then chairman of the committee on foreign relations of the Senate, who was engaged in a personal quarrel with the administration, simply refused to report back the treaty to the Senate, and he was supported by a sufficient number of his committee and of Senators to enable the matter to be left in this position. It required new negotiations to prolong the term of ratification, and it was with great difficulty that in a subsequent session the treaty was finally brought before the Senate and rejected. As may be imagined, our friendly relations with Denmark were considerably impaired by this method of doing business."

Schuyler's Am. Diplomacy, 23 *ff.*

(6) HAWAII (SANDWICH ISLANDS).

§ 62.

"The United States have regarded the existing authorities in the Sandwich Islands as a Government suited to the condition of the people, and resting on their own choice; and the President is of opinion that the interests of all commercial nations require that that Government should not be interfered with by foreign powers. Of the vessels which visit the islands, it is known that the great majority belong to the United States. The United States, therefore, are more interested in the fate of the islands and of their Government than any other nation can be; and this consideration induces the President to be quite willing to declare, as the sense of the Government of the United States, that the Government of the Sandwich Islands ought to be respected; that no power ought either to take possession of the islands as a conquest or for the purpose of colonization, and that no power ought to seek for any undue control over the existing Government, or any exclusive privileges or preferences with it in matters of commerce."

Mr. Webster, Sec. of State, to Messrs. Haalilio and Richards, Dec. 19, 1842. 6 Webster's Works, 478.

"Owing to their locality and to the course of the winds which prevail in this quarter of the world, the Sandwich Islands are the stopping place for almost all vessels passing from continent to continent across the Pacific Ocean. They are especially resorted to by the great numbers of vessels of the United States which are engaged in the whale-fishery in those seas. The number of vessels of all sorts and the amount of property owned by citizens of the United States which are found in those islands in the course of a year are stated, probably with sufficient accuracy, in the letter of the agents.

"Just emerging from a state of barbarism, the Government of the islands is as yet feeble; but its dispositions appear to be just and pacific, and it seems anxious to improve the condition of its people by the introduction of knowledge, of religious and moral institutions, means of education, and the arts of civilized life.

"It cannot but be in conformity with the interest and the wishes of the Government and the people of the United States that this community, thus existing in the midst of a vast expanse of ocean, should be respected, and all its rights strictly and conscientiously regarded. And this must also be the true interest of all other commercial states. Far remote from the dominions of European powers, its growth and prosperity as an independent state may yet be in a high degree useful to all whose trade is extended to those regions, while its nearer approach to this continent and the intercourse which American vessels have with it, such vessels constituting five-sixths of all which annually visit it, could not but create dissatisfaction on the part of the United States at any attempt by another power, should such an attempt be threatened or feared, to take possession of the islands, colonize them, and subvert the native Government. Considering, therefore, that the United States possess so very large a share in the intercourse with those islands, it is deemed not unfit to make the declaration that their Government seeks, nevertheless, no peculiar advantages, no exclusive control over the Hawaiian Government, but is content with its independent existence, and anxiously wishes for its security and prosperity. Its forbearance in this respect, under the circumstances of the very large intercourse which American vessels have with the islands, would justify this Government, should events hereafter arise to require it, in making a decided remonstrance against the adoption of an opposite policy by any other power. Under the circumstances, I recommend to Congress to provide for a moderate allowance, to be made out of the Treasury, to the consul residing there, that, in a Government so new and a country so remote, American citizens may have respectable authority to which to apply for redress in case of injury to their persons and property, and to whom the Government of the country may also make known any acts committed by American citizens of which it may think it has a right to complain."

Message of President Tyler, Dec. 30, 1842. 6 Webster's Works, 463–4. See House Ex. Doc. No. 35, 27th Cong., 3d sess.

The Hawaiian Islands bear such peculiar relations to ourselves that "we might even feel justified, consistently with our own principles, in interfering by force to prevent their falling (by conquest) into the hands of one of the great powers of Europe."

Mr. Legaré, Sec. of State, to Mr. Everett, June 13, 1843. MSS. Inst., Gr. Brit. See also Mr. Marcy, Sec. of State, to Mr. Buchanan, Mar. 11, 1853. MSS. Inst., Gr. Brit.

"The Department will be slow to believe that the French have any intention to adopt with reference to the Sandwich Islands the same policy which they have pursued in regard to Tahiti. If, however, in your judgment, it should be warranted by circumstances, you may take a proper opportunity to intimate to the minister for foreign affairs of France, that the situation of the Sandwich Islands in respects to our possessions on the Pacific, and the bonds, commercial and of other descriptions, between them and the United States are such that we could never with indifference allow them to pass under the dominion or exclusive control of any other power. We do not ourselves covet sovereignty over them. We would be content that they should remain under their present rulers, who, we believe, are disposed to be just and impartial in their dealings with all nations."

Mr. Clayton, Sec. of State, to Mr. Rives, July 5, 1850. MSS. Inst., France.

"The proceedings of M. Dillon and the French admiral there, in 1849, so far as we are informed respecting them, seem, both in their origin and in their nature, to have been incompatible with any just regard for the Hawaiian Government as an independent state. They cannot, according to our impressions, be accounted for upon any other hypothesis than a determination on the part of those officers to humble and annihilate that Government for refusing to accede to demands which, if granted, must have been at the expense of all self-respect and substantial sovereignty. The further enforcement of those demands, which, it appears, is the object of M. Perrin's mission, would be tantamount to a subjugation of the islands to the dominion of France. A step like this could not fail to be viewed by the Government and people of the United States with a dissatisfaction which would tend seriously to disturb our existing friendly relations with the French Government. This is a result to be deplored. If, therefore, it should not be too late, it is hoped that you will make such representations upon the subject to the minister of foreign affairs of France as will induce that Government to desist from measures incompatible with the soverignty and independence of the Hawaiian Islands, and to make amends for the acts which the French agents have already committed there in contravention of the law of nations, and of the treaty between the Hawaiian Government and France."

Mr. Webster, Sec. of State, to Mr. Rives, June 19, 1851. MSS. Inst., France.

"The Government of the United States was the first to acknowledge the national existence of the Hawaiian Government, and to treat with it as an independent state. Its example was soon followed by several of the Governments of Europe, and the United States, true to its treaty obligations, has in no case interfered with the Hawaiian Government for the purpose of opposing the course of its own independent conduct, or of dictating to it any particular line of policy. In acknowledging the independence of the islands and of the Government established over them,

it was not seeking to promote any peculiar object of its own. What it did, and all that it did, was done openly, in the face of day, in entire good faith, and known to all nations. It declared its real purpose to be to favor the establishment of a Government at a very important point in the Pacific Ocean, which should be able to maintain such relations with the rest of the world as are maintained between civilized states.

"From this purpose it has never swerved for a single moment, nor is it inclined, without the pressure of some necessity, to depart from it now, when events have occurred giving to the islands and to their intercourse with the United States a new aspect and increased importance.

"This Government still desires to see the nationality of the Hawaiian Government maintained, its independent administration of public affairs respected, and its prosperity and reputation increased.

"But while thus indisposed to exercise any sinister influence itself over the councils of Hawaii, or to overawe the proceedings of its Government by the menace or the actual application of superior military force, it expects to see other powerful nations act in the same spirit. It is, therefore, with unfeigned regret that the President has read the correspondence and become acquainted with the circumstances occurring between the Hawaiian Government and Mr. Perrin, the commissioner of France, at Honolulu."

Mr. Webster, Sec. of State, to Mr. Severance, July 14, 1851. MSS. Inst., Hawaii.

"The Hawaiian Islands are ten times nearer to the United States than to any of the powers of Europe. Five-sixths of all their commercial intercourse is with the United States, and these considerations, together with others of a more general character, have fixed the course which the Government of the United States will pursue in regard to them. The annunciation of this policy will not surprise the Governments of Europe, nor be thought to be unreasonable by the nations of the civilized world; and that policy is, that while the Government of the United States itself, faithful to its original assurance, scrupulously regards the independence of the Hawaiian Islands, it can never consent to see those islands taken possession of by either of the great commercial powers of Europe, nor can it consent that demands manifestly unjust and derogatory, and inconsistent with a *bona fide* independence, shall be enforced against that Government."

Ibid.

"It is earnestly to be hoped that the differences which have for some time past been pending between the Government of the French Republic and that of the Sandwich Islands, may be peaceably and durably adjusted so as to secure the independence of those islands. Long before the events which have of late imparted so much importance to the possessions of the United States on the Pacific we acknowledged the independence of the Hawaiian Government. This Government was first

in taking that step, and several of the leading powers of Europe immediately followed. We were influenced in this measure by the existing and prospective importance of the islands as a place of refuge and refreshment for our vessels engaged in the whale fishery, and by the consideration that they lie in the course of the great trade which must, at no distant day, be carried on between the western coast of North America and Eastern Asia.

"We were also influenced by a desire that those islands should not pass under the control of any other great maritime state, but should remain in an independent condition, and so be accessible and useful to the commerce of all nations. I need not say that the importance of these considerations has been greatly enhanced by the sudden and vast development which the interests of the United States have obtained in California and Oregon, and the policy heretofore adopted in regard to those islands will be steadily pursued."

President Fillmore, Second Annual Message, 1851.

"You are, no doubt, aware that it has been the constant desire of this Government to cherish the kindest international relations with the Sandwich Islands, and to assist them by all the moral influence it could exert to sustain their independence. Happily the policy of other Governments at present with respect to them seems not to be different from our own. While we do not intend to attempt the exercise of any exclusive control over them, we are resolved that no other power or state shall exact any political or commercial privileges from them which we are not permitted to enjoy, far less to establish any protectorate over them."

Mr. Marcy, Sec. of State, to Mr. Gregg, Sept. 22, 1853. MSS. Inst., Hawaii.

"The intercourse between our Pacific ports and the ports of the distant East is destined perhaps to be upon as large a scale as that which we now enjoy with all the world, and the vessels engaged in that trade must ever resort to the Sandwich Islands for fuel and other supplies, as has ever been the case with our whale ships in their outward and inward voyages. It is consequently indispensable to our welfare that the policy which governs them should be liberal, and that it should continue free from the control of any third country."

Mr. Marcy, Sec. of State, to Mr. Gregg, Sept. 22, 1853. MSS. Inst., Hawaii.

"I do not think the present Hawaiian Government can long remain in the hands of the present rulers or under the control of the native inhabitants of these islands, and both England and France are apprised of our determination not to allow them to be owned by or to fall under the protection of these powers or of any other European nation.

"It seems to be inevitable that they must come under the control of this Government, and it would be but reasonable and fair that these

powers should acquiesce in such a disposition of them, provided the transference was effected by fair means."

Mr. Marcy, Sec. of State, to Mr. Mason, Dec. 16, 1853. MSS. Inst., France.

"If any foreign connection is to be formed, the geographical position of these islands indicates that it should be with us. Our commerce with them far exceeds that of all other countries; our citizens are embarked in the most important business concerns of that country, and some of them hold important public positions. In view of the large American interests there established, and the intimate commercial relations existing at this time, it might well be regarded as the duty of this Government to prevent these islands from becoming the appendage of any other foreign power."

Mr. Marcy, Sec. of State, to Mr. Gregg, Apr. 4, 1854. MSS. Inst., Hawaii.

"This Government will receive the transfer of the sovereignty of the Sandwich Islands, with all proper provisions relative to the existing rights and interests of the people thereof, such as are usual and appropriate to territorial sovereignty. It will be the object of the United States, if clothed with the sovereignty of that country, to promote its growth and prosperity. This consideration alone ought to be a sufficient assurance to the people that their rights and interests will be duly cherished by this Government."

Mr. Marcy, Sec. of State, to Mr. Gregg, Jan. 31, 1855. MSS. Inst., Hawaii.

"The United States would not regard with unconcern an attempt on the part of any foreign power, and especially any European maritime power, to disturb the repose or interfere with the security of the Hawaiian Islands."

Mr. Marcy, Sec. of State, to Mr. Lee, Sept. 21, 1855. MSS. Notes, Hawaii.

The public mind in the United States was not, in 1868, in a condition to entertain the question of the annexation of the Sandwich Islands.

Mr. Seward, Sec. of State, to Mr. Spalding, July 5, 1868, MSS. Inst., Hawaii; see Mr. J. C. Bancroft Davis to Mr. Peirce, March 15, 1873, *ibid.*

"The acquisition of territory beyond the sea outside the present confines of the United States, meets the opposition of many discreet men who have more or less influence in our councils. It cannot be entered upon without very grave deliberation, and in full view of all the advantages or disadvantages that may result.

"This question in its relation to the Sandwich Islands is full of interest, and has long attracted as a possible question the attention of many persons here as well as in those islands. It seems that events are likely to precipitate it upon us for consideration as a practical question.

"The position of the Sandwich Islands as an outpost fronting and commanding the whole of our possessions on the Pacific Ocean, gives to the future of those islands a peculiar interest to the Government and

people of the United States. It is very clear that this Government cannot be expected to assent to their transfer from their present control to that of any powerful maritime or commercial nation. Such transfer to a maritime power would threaten a military surveillance in the Pacific similar to that which Bermuda has afforded in the Atlantic. The latter has been submitted to from necessity, inasmuch as it was congenital with our Government, but we desire no additional similar outposts in the hands of those who may at some future time use them to our disadvantage."

Mr. Fish, Sec. of State, to Mr. Peirce, Mar. 25, 1873. MSS. Inst., Hawaii.

"The position of the Hawaiian Islands in the vicinity of our Pacific Coast, and their intimate commercial and political relations with us, lead this Government to watch with grave interest, and to regard unfavorably, any movement, negotiation, or discussion aiming to transfer them in any eventuality whatever to another power."

Mr. Blaine, Sec. of State, to Mr. Lowell, Apr. 23, 1881. MSS. Inst., Gr. Brit.

"Your course, upon the question to which you have called the attention of the Department, is approved. While I desire earnestly to avoid the use of imperative language toward the Hawaiian Government, and prefer that our relation in any consequent discussion should be that of friendly advice and support, this Government cannot permit any violation, direct or indirect, of the terms and conditions of the treaty of 1875.

"The treaty was made at the continuous and urgent request of the Hawaiian Government. It was, as it was intended to be, an evidence of the friendship of the United States, and was shaped by a large and liberal disposition on our part to consult the wishes and interests of the Hawaiian Government. As you are aware, there was much opposition to some of its concessions by our own citizens whose capital was employed in certain agricultural industries. The term of the treaty was limited in order that both parties might obtain practical experience of its operation, and in order to secure the experiment from possible disturbance it was expressly stipulated—

"'On the part of His Hawaiian Majesty, that so long as this treaty shall remain in force, he will not make any treaty by which any other nation shall obtain the same privileges, relative to the admission of any articles free of duty, hereby secured to the United States.' (Article IV.)

"It would be an unnecessary waste of time and argument to undertake an elaborate demonstration of a proposition so obvious as that the extension of the privileges of this treaty to other nations under a "most-favored-nation clause" in existing treaties, would be as flagrant a violation of the explicit stipulation as a specific treaty making the concession.

"You are instructed to say to the Hawaiian Government that the Government of the United States considers this stipulation as of the very essence of the treaty, and cannot consent to its abrogation or modi-

fication, directly or indirectly. You will add that if any other power should deem it proper to employ undue influence upon the Hawaiian Government to persuade or compel action in derogation of this treaty, the Government of the United States will not be unobservant of its rights and interests, and will be neither unwilling nor unprepared to support the Hawaiian Government in the faithful discharge of its treaty obligations.

"In reference to the probability of a judicial construction of the treaty by the Hawaiian courts, upon proceedings instituted by a British merchant, I would have been glad if you had been able to furnish me with the correspondence between the British commissioner and the Hawaiian secretary for foreign affairs. From your history of the controversy, I find it difficult to understand how Her Britannic Majesty's Government can consistently maintain a right of diplomatic intervention for the settlement of any claim for the difference in duty imposed under the British treaties and under the treaty with the United States.

"Be that as it may, a judicial decision of this question by the Hawaiian courts would be as unsatisfactory to the United States as to Great Britain. I am not aware whether or not a treaty, according to the Hawaiian constitution, is, as with us, a supreme law of the land, upon the construction of which—the proper case occurring—every citizen would have the right to the judgment of the courts.

"But even if it be so, and if the judicial department is entirely independent of the executive authority of the Hawaiian Government, then the decision of the court would be the authorized interpretation of the Hawaiian Government, and, however binding upon that Government, would be none the less a violation of the treaty.

"In the event, therefore, that a judicial construction of the treaty should annul the privileges stipulated, and be carried into practical execution, this Government would have no alternative, and would be compelled to consider such action as the violation by the Hawaiian Government of the express terms and conditions of the treaty, and, with whatever regret, would be forced to consider what course in reference to its own interests had become necessary upon the manifestation of such unfriendly feeling.

"The diligence and ability which you have given this subject render perhaps any further instruction unnecessary, but I will suggest that in your communications with the Hawaiian Government it is desirable that you should convey the impression that the Government of the United States believes that the Hawaiian Government desires and intends to carry out the provisions of the treaty in perfect good faith, and that we understand and appreciate the unjust pressure of foreign interests and influence brought to divert it from its plain and honorable duty. The position of the Government of the United States in your representations should be rather that of encouragement of the

Hawaiian Government to persevere in the faithful discharge of its treaty obligations, than complaint of any anticipated dereliction."

Mr. Blaine, Sec. of State, to Mr. Comly, June 30, 1881. MSS. Inst., Hawaii; For. Rel., 1881.

"In your dispatch No. 189 you have informed this Department of the efforts made by the British commissioner to prejudice the interests and influence of the United States in the Hawaiian Islands; and you properly assume that such efforts, so far as they tend to improve the diplomatic position of his country by his personal conduct, must be counteracted by similar endeavors on your part without the formal intervention of this Government.

"The action of the Government must necessarily wait upon the actual occurrence or threatened probability of some official transaction in conflict with its treaty rights. But with the proper information before it the Department would undoubtedly instruct you to anticipate any such transaction by such diplomatic remonstrance as our relations with Hawaii would justify.

"It is difficult to say that the information derived through the newspapers in reference to a supposed coolie convention with Great Britain is of a character to require our official intervention. But I take it for granted that, since the return of King Kalakaua, you will be able to learn whether such a convention is contemplated, and if, in your opinion, there is enough in the general rumors to warrant it, you will consider yourself as instructed to make formal inquiry of the Hawaiian Government if any such project is entertained.

"You say that the proposed convention provides for a 'protector of the coolie immigrants,' who tries all cases of disputes arising among the coolies themselves, and also between coolies and citizens of the country where they reside; and cases of an appeal from his judgment go, not to the courts of the country, but to the British consul or diplomatic representative.

"I do not understand whether this is a recital from some existing convention or a rumor of what the contemplated convention is expected to be.

"In the treaty between Great Britain and the Netherlands relative to emigration of laborers from India to the Dutch colony of Surinam, signed in 1870 and ratified in 1872, and which is the most recent to which I have been able to refer, I find the following provision:

"XIX. All emigrants within the provision of this convention shall, in the same manner as other subjects of the British Crown, and conformably to the ordinary rules of international law, enjoy in the Netherland colony the right of claiming the assistance of the British consular agent; and no obstacle shall be opposed to the laborers resorting to the consular agent, and communicating with him, without prejudice, however, to the obligations arising out of his engagements.'

"Properly interpreted and fairly applied, I do not see any reasonable ground of objection to this or to a similar provision. But a convention containing stipulations such as you describe would be very different. To secure to the coolie immigrants from India, who are unquestionably British subjects, such an extreme privilege of exterritoriality would be extending them advantages not possessed by the subjects of any other power. And as Articles VIII and X of the treaty between the United States and the Hawaiian Islands of 1849 guarantee to the citizens and consular officers of the United States the treatment of the most favored nation, and a participation in all privileges granted to others, the United States would have to insist upon equal treatment for its citizens and consuls, and it can scarcely be doubted that other powers would make the same demand.

"A consideration of the embarrassment which such a condition of foreign rights and privileges would create for the Hawaiian Government, would present almost insuperable difficulties in the way of such a convention.

"But if negotiations such as you describe are really in progress, you will ask for an interview with the secretary for foreign affairs and make the following representation of the views of the United States:

"The Government of the United States has, with unvarying consistency, manifested respect for the independence of the Hawaiian Kingdom, and an earnest desire for the welfare of its people. It has always felt and acted on the conviction that the possession of the islands by a peaceful and prosperous power, with which there was no possibility of controversy or collision, was most desirable, in reference to its own large and rapidly increasing interests on the Pacific. It has declined, even at the request of the Hawaiian people, to assume over their affairs a protectorate, which would only be a thinly disguised domination, and it has confined its efforts and influence to strengthen their Government, and open to their commerce and enterprise the readiest and most profitable connection with its own markets; but this policy has been based upon our belief in the real and substantial independence of Hawaii. The Government of the United States has always avowed and now repeats that, under no circumstances, will it permit the transfer of the territory or sovereignty of these islands to any of the great European powers. It is needless to restate the reasons upon which that determination rests. It is too obvious for argument that the possession of these islands by a great maritime power would not only be a dangerous diminution of the just and necessary influence of the United States in the waters of the Pacific, but in case of international difficulty it would be a positive threat to interests too large and important to be lightly risked.

"Neither can the Government of the United States allow an arrangement which, by diplomatic *finesse* or legal technicality, substitutes for the native and legitimate constitutional Government of Hawaii, the controlling influence of a great foreign power. This is not the real and

substantial independence which it desires to see and which it is prepared to support. And this Government would consider a scheme by which a large mass of British subjects, forming in time not improbably the majority of its population, should be introduced into Hawaii, made independent of the native Government, and be ruled by British authorities, judicial and diplomatic, as one entirely inconsistent with the friendly relations now existing between us, as trenching upon treaty rights which we have secured by no small consideration, and as certain to involve the two countries in irritating and unprofitable discussion.

"In thus instructing you, however, I must impress upon you that much is trusted to your discretion. There would be neither propriety nor wisdom in making such declarations unnecessarily or prematurely. If, therefore, you find that the proposed convention is not one with the extreme provisions to which you refer, or if you have reason to believe that your representations of the unfriendly impression which it would make here will be sufficient to change the purpose of the Hawaiian Government, you will confine yourself to ordinary diplomatic remonstrance. And, in any event, it will be prudent to indicate that such would, in your opinion, be the view taken by this Government before making the formal protest, which, under the contingency of persistent adverse action on the part of the Hawaiian Government, you are authorized to make."

Mr. Blaine, Sec. of State, to Mr. Comly, Nov. 19, 1881. MSS. Inst., Hawaii; For. Rel., 1881.

"The intelligent and suggestive character of your recent dispatches naturally leads me to a review of the relationship of the Hawaiian Kingdom to the United States at somewhat greater length than was practicable in the limited scope of my instruction of November 19. That dispatch was necessarily confined to a consideration of the immediate question of a possible treaty engagement with Great Britain which would give to that power in Hawaii a degree of extraterritoriality of jurisdiction inconsistent with the relations of the islands to the other Powers, and especially to the United States.

"With the abandonment of feudal government by King Kamehameha III in 1839, and the inauguration of constitutional methods, the history of the political relation of Hawaii to the world at large may very properly be said to begin. The recognition of independent sovereignty by the great powers took place soon after that act on the part of the United States, dating from 1844. Even at that early day, before the United States had become a power on the Pacific coast, the commercial activity of our people was manifested in their intercourse with the islands of Oceanica, of which the Hawaiian group is the northern extremity. In 1848 the treaty of Guadalupe Hidalgo confirmed the territorial extension of the United States to the Pacific, and gave to the Union a coast line on that ocean little inferior in extent, and superior in natural

wealth, to the Atlantic sea-board of the original thirteen States. In 1848-'49 the discoveries of gold in California laid the foundation for the marvelous development of the western coast, and, in that same year the necessities of our altered relationship to the Pacific Ocean found expression in a comprehensive expression of friendship, commerce and navition with the sovereign Kingdom of Hawaii.

"The material connection between the Hawaiian Islands and the Pacific coast of the Union was natural and inevitable. But lately admitted to the family of separate states, Hawaii was necessarily drawn into closer kinship with California, then just entering on a path of prosperity and greatness whose rapidity of development the world has never seen equaled. Hence the movements toward intimate commercial relations between the two countries which, after the progressive negotiations of 1856, 1867, and 1869, culminated in the existing reciprocity treaty of January 30, 1875, which gave to the United States in Hawaii, and to Hawaii in the United States, trading rights and privileges in terms denied to other countries.

"I have spoken of the Pacific coast line given to the American Union by the cession of California in 1848, as little inferior in extent, and superior in natural wealth, to the Atlantic sea-board of the original Union. Since that time our domain on the Pacific has been vastly increased by the purchase of Alaska. Taking San Francisco as the commercial center on the western slope, a line drawn northwestwardly to the Aleutian group, marks our Pacific border almost to the confines of Asia. A corresponding line drawn southwestwardly from San Francisco to Honolula marks the natural limit of the ocean belt within which our trade with the oriental countries must flow, and is, moreover the direct line of communication between the United States and Australasia. Within this belt lies the commercial domain of our western coast.

"I have had recent occasion to set forth the vitally integral importance of our Pacific possessions, in a circular letter addressed on the 24th of June last to our representatives in Europe, touching the necessary guarantees of the proposed Panama Canal as a purely American waterway to be treated as part of our own coast line. The extension of commercial empire westward from those States is no less vitally important to their development than is their communication with the eastern coast by the Isthmian channel. And when we survey the stupendous progress made by the western coast during the thirty years of its national life as a part of our dominion, its enormous increase of population, its vast resources of agriculture and mines, and its boundless enterprise, it is not easy to set a limit to its commercial activity or foresee a check to its maritime supremacy in the waters of the Orient, so long as those waters afford, as now, a free and neutral scope for our peaceful trade.

"In thirty years the United States has acquired a legitimately dominant influence in the North Pacific, which it can never consent to see

decreased by the intrusion therein of any element of influence hostile to its own. The situation of the Hawaiian Islands, giving them the strategic control of the North Pacific, brings their possession within the range of questions of purely American policy, as much so as that of the Isthmus itself. Hence the necessity, as recognized in our existing treaty relations, of drawing the ties of intimate relationship between us and the Hawaiian Islands so as to make them practically a part of the American system without derogation of their absolute independence. The reciprocity treaty of 1875 has made of Hawaii the sugar-raising field of the Pacific slope, and gives to our manufacturers therein the same freedom as in California and Oregon. That treaty gave to Hawaii its first great impetus in trade, and developed that activity of production which has attracted the eager attention of European powers, anxious to share in the prosperity and advantages which the United States have created in mid-ocean. From 1877, the first full year succeeding the conclusion of the reciprocity treaty, to 1880, the imports from Hawaii to the United States nearly doubled, increasing from $2,550,335 in value to $4,606,444, and in this same period the exports from the United States to Hawaii rose from $1,272,949 to $2,026,170. In a word, Hawaii is, by the wise and beneficent provisions of the treaty, brought within the circle of the domestic trade of the United States, and our interest in its friendly neutrality is akin to that we feel in the guaranteed independence of Panama. On the other hand, the interests of Hawaii must inevitably turn toward the United States in the future, as in the present, as its natural and sole ally in conserving the dominion of both in the Pacific trade. Your own observation, during your residence at Honolulu, has shown you the vitality of the American sentiment which this state of things has irresistibly developed in the islands. I view that sentiment as the logical recognition of the needs of Hawaii as a member of the American system of states rather than as a blind desire for a protectorate or ultimate annexation to the American Union.

"This Government has on previous occasions been brought face to face with the question of a protectorate over the Hawaiian group. It has, as often as it arose, been set aside in the interest of such commercial union and such reciprocity of benefits as would give to Hawaii the highest advantages, and at the same time strengthen its independent existence as a sovereign state. In this I have summed up the whole disposition of the United States toward Hawaii in its present condition.

"The policy of this country with regard to the Pacific is the natural complement to its Atlantic policy. The history of our European relations for fifty years shows the jealous concern with which the United States has guarded its control of the coast from foreign interference, and this without extension of territorial possession beyond the mainland. It has always been its aim to preserve the friendly neutrality of

the adjacent states and insular possessions. Its attitude toward Cuba is in point. That rich island, the key to the Gulf of Mexico, and the field for our most extended trade in the Western hemisphere is, though in the hands of Spain, a part of the American commercial system. Our relations, present and prospective, toward Cuba have never been more ably set forth than in the remarkable note addressed by my predecessor, Mr. Secretary Everett, to the ministers of Great Britain and France in Washington, on the 1st of December, 1852, in rejection of the suggested tripartite alliance to forever determine the neutrality of the Spanish Antilles. In response to the proposal that the United States, Great Britain, and France should severally and collectively agree to forbid the acquisition of control over Cuba by any or all of them, Mr. Everett showed that, without forcing or even coveting possession of the island, its condition was essentially an American question; that the renunciation forever by this Government of contingent interest therein would be far broader than the like renunciation by Great Britain or France; that if ever ceasing to be Spanish, Cuba must necessarily become American, and not fall under any other European domination, and that the ceaseless movement of segregation of American interests from European control and unification in a broader American sphere of independent life could not and should not be checked by any arbitrary agreement.

"Nearly thirty years have demonstrated the wisdom of the attitude then maintained by Mr. Everett, and have made indispensable its continuance and its extension to all parts of the American Atlantic system where a disturbance of the existing status might be attempted in the interest of foreign powers. The present attitude of this Government toward any European project for the control of an Isthmian route is but the logical sequence of the resistance made in 1852 to the attempted pressure of an active foreign influence in the West Indies.

"Hawaii, although much farther from the Californian coast than is Cuba from the Floridian peninsula, holds in the western sea much the same position as Cuba in the Atlantic. It is the key to the maritime dominion of the Pacific States, as Cuba is the key to the Gulf trade. The material possession of Hawaii is not desired by the United States any more than was that of Cuba. But under no circumstances can the United States permit any change in the territorial control of either which would cut it adrift from the American system, whereto they both indispensably belong.

"In this aspect of the question it is readily seen with what concern this Government must view any tendency toward introducing into Hawaii new social elements destructive of its necessarily American character. The steady diminution of the native population of the islands, amounting to some 10 per cent. between 1872 and 1878, and still continuing, is doubtless a cause of great alarm to the Government of the Kingdom, and it is no wonder that a solution should be sought with eagerness in any seemingly practicable quarter. The problem, how-

ever, is not to be met by a substitution of Mongolian supremacy for native control, as seems at first sight possible through the rapid increase in Chinese immigration to the islands. Neither is a wholesale introduction of the coolie element, professedly Anglo-Indian, likely to afford any more satisfactory outcome to the difficulty. The Hawaiian Islands cannot be joined to the Asiatic system. If they drift from their independent station it must be toward assimilation and identification with the American system, to which they belong by the operation of natural laws and must belong by the operation of political necessity.

"I have deemed it necessary to go, with somewhat of detail, into the real nature of our relations toward Hawaii, in order that you may intelligently construe my recent instructions in the light of our true and necessary policy on the Pacific. It may also tend to simplify your intercourse with the native Government if you are in a position to disabuse the minds of its statesmen of any belief or impression that our course is selfishly intrusive or looks merely to the exclusive retention of transient advantages of local commerce in which other countries seek a share. The United States was one of the first among the great nations of the world to take an active interest in the upbuilding of Hawaiian independence, and the creation of a new and potential life for its people. It has consistently endeavored, and with success, to enlarge the material prosperity of Hawaii on such independent basis. It proposes to be equally unremitting in its efforts hereafter to maintain and develop the advantages which have accrued to Hawaii, and to draw closer the ties which imperatively unite it to the great body of American commonwealths.

"In this line of action the United States does its simple duty both to Hawaii and itself, and it cannot permit such obvious neglect of national interest as would be involved by silent acquiescence in any movement looking to a lessening of those American ties and the substitution of alien and hostile interests. It firmly believes that the position of the Hawaiian Islands as the key to the dominion of the American Pacific demands their neutrality, to which end it will earnestly co-operate with the native Government. And if, through any cause, the maintenance of such a position of neutrality should be found by Hawaii to be impracticable, this Government would then unhesitatingly meet the altered situation by seeking an avowedly American solution for the grave issues presented.

"The communication to the Hawaiian Government of the views herein expressed is left, both as to manner and extent, to your own discretion. If the treaty relations with Great Britain, of which my last instruction treats, prove to be of such a nature as to require the communication of a formal protest in the premises to the Hawaiian minister of foreign affairs, it would probably be wise for you to give him a copy of this dispatch as a just and temperate exposition of the intentions of this Government, and a succinct explanation of the reasons which have induced

protest. Even if the formal delivery hereof to the minister not appear advisable, it would be well for you to reflect this in your conversations with the public men at Honolulu, who am sure, find these views in harmony with the true interests of awaiian Kingdom as they are with those of the United States."

Mr. Blaine, Sec. of State, to Mr. Comly, Dec. 1, 1881. MSS. Inst., Hawaii; For. Rel., 1881.

There is little doubt that were the Hawaiian Islands, by annexation listinct protection, a part of the territory of the Union, their fertile ources for the growth of rice and sugar would not only be controlled American capital, but so profitable a field of labor would attract intelligent workers thither from the United States.

"A purely American form of colonization in such a case would meet ll the phases of the problem. Within our borders could be found the capital, the intelligence, the activity, and the necessary labor trained in the rice swamps and cane fields of the Southern States. And it may be well to consider how, even in the chosen alternative of maintaining Hawaiian independence, these prosperous elements could be induced to go from our shores to the islands, not like the coolies, practically enslaved, not as human machines, but as thinking, intelligent, working factors in the advancement of the material interests of the islands.

Mr. Blaine, Sec. of State, to Mr. Comly, Dec. 1, 1881. MSS. Inst., Hawaii.

"Your No. 217, of the 8th instant, in which you report the political tendencies now making themselves manifest in the islands, and the movement in the direction of onerous taxation of capital and property to a degree which cannot fail to work injury to the foreign interests and enterprise which have built up Hawaiian prosperity, has been read with attention.

"It cannot be doubted that indiscriminate and reckless exercise of the tax-levying power by those portions of the native element who have little or no taxable interests at stake must react harmfully on the essential elements of insular prosperity. Independently of the consideration that a large part of the operating capital and mechanical enterprises of Hawaii has been contributed by citizens of the United States, this Government feels itself so kindly bound to Hawaii by the traditions of past intercourse that it would not hesitate to remonstrate with the Hawaiian Government against the adoption of a short-sighted policy which would be alike harmful to existing vested interests and repellant of the further influx of capital from abroad.

"While this Government recognized from the first the constitutional sovereignty of Hawaii, and still recognizes her right to adjust internal matters of taxation and revenue on constitutional principles, yet it cannot permit to pass without very urgent protest in all proper quarters a measure subversive of the material interests of so many of its citizens, the faith of international comity, have given their wealth, labor

and skill to aid in the prosperity of Hawaii. And it makes this protest the more earnestly, inasmuch as the treaty relations between the two countries (in which Hawaiian interests were even more subserved than our own) are such as to give the United States the moral right to expect that American property in Hawaii will be no more burdened than would Hawaiian property in the United States."

Mr. Frelinghuysen, Sec. of State, to Mr. Comly, May 31, 1882. MSS. Inst., Hawaii; For. Rel., 1882.

"For several years the Pacific Mail Steamship Company has employed four of its vessels between San Francisco and Australia, which on both outward and homeward trips have stopped at the Sandwich Islands. Their vessels on the China line have also made such stops, as have those of the Occidental and Oriental line of British steamers plying between San Francisco and China. In August last the Hawaiian Government granted to the Pacific Mail Steamship Company the privilege of carrying Chinese emigrant passengers to the Sandwich Islands from China, granting at the same time a like privilege to the Occidental and Oriental Steamship Company, which is organized under the laws of Great Britain, and making the privilege exclusive to these two companies.

"In the letter of the minister of foreign affairs, conveying this grant, the assurance is expressly given to the Pacific Mail Steamship Company, that while the Government is not in a position to fix any definite time during which the arrangement shall last, no change will be made without reasonable warning to that company, unless some emergency, not then foreseen, should arise.

"This privilege is regarded by the company as of great consequence, as it would probably enable them to continue, even through the dull season, the regular trips of their vessels bearing the United States mail.

"But soon after this privilege was granted, Mr. C. Spreckles, of San Francisco, a large owner in the Oceam Steam Navigation Company recently established between San Francisco and the Hawaiian Islands, informed the Pacific Mail Steamship Company that unless the demand previously made through him that the calling of the company's Australian steamers at Honolulu be discontinued, he would procure an abrogation of its privilege of landing Chinese passengers at that port.

"The company, distrusting his ability to accomplish this object, declined the proposition, and received thereafter notice from the foreign minister, dated October 15 last, that his Government had entered into an engagement with the Oceanic Steamship Company, conferring on that company exclusive privilege to transport Chinese immigrants, and that after January 1, 1884, permits would not be issued by Hawaiian consular officers in China or the United States for such purpose to vessels of other companies.

"Mr. Lauterbach further states that the exclusive rights thus conferred upon the Oceanic line cannot be enjoyed by it directly, inasmuch as it does not appear that it has ever proposed to perform any service between the Sandwich Islands and China, and that, in keeping with this conclusion, Mr. Spreckles, upon the refusal of the Pacific Mail Steamship Company to divert its Australian vessels from Honolulu, proffered to the British company, the Occidental and Oriental line, the exclusive privilege conferred on the Oceanic line by the Hawaiian Government.

"While the offer has not yet been accepted, Mr. Lauterbach expresses the expectation that it will be, and that the result will be the creation, by these acts, of a special and exclusive privilege to a British company.

"The provisions of treaty obligations between Hawaii and the United States are referred to as contravened by an arrangement of the character anticipated, and the Department is asked to remonstrate in the premises in behalf of the Pacific Mail Steamship Company.

"The practical effect of the proposed exclusive grant or concession by the Hawaiian Government to the Oceanic Line, of San Francisco, of which Mr. Spreckles is the controlling manager, if not the sole owner, and the transfer by that gentleman of the franchise or right thus granted to the Occidental and Oriental Company, must be to establish and maintain a discrimination against the Pacific Mail Steamship Company in regard to an important and profitable element of their carrying trade; and this, as it is conceived by this Government, would be in contravention of the spirit of the first and second articles of the treaty of December, 1849, between the United States and the Hawaiian Islands, and directly contrary to the letter and spirit of the sixth article of that treaty, the provisions of which are as follows:

"'Steam vessels of the United States which may be employed by the Government of the said States in the carrying of their public mails across the Pacific Ocean, or from one port in that ocean to another, shall have free access to the ports of the Sandwich Islands, with the privilege of stopping therein to refit, to refresh, to land passengers and their baggage, and for the transaction of any business pertaining to the public mail service of the United States, and shall be subject in such ports to no duties of tonnage, harbor, light-houses, quarantine, or other similar duties of whatever nature or under whatever denomination.'

"It is true that the exclusive grant of the Hawaiian Government is made directly to the Oceanic Company, an American corporation, but its transfer by Mr. Spreckles to the English company, and the refusal of the Hawaiian consuls, under instructions from that Government, to grant the required certificates to a particular class of passengers unless they take passage on the ships of the line, enjoying the exclusive privilege, accomplished by indirection precisely what the treaty forbids being done directly, *i. e.*, the establishing of the discriminating policy in navigation and commerce against steam vessels of the United States.

plying between the eastern and western shores of the Pacific Ocean and carrying its mails. The right of the Hawaiian Government to admit to or to exclude from its dominions immigrants of any nationality or race is not for a moment questioned by this, but that the exclusive privilege of carrying immigrants who are admitted to Hawaii should be accorded to any one company owning a particular line of ships, whether American, Hawaiian, or foreign to both countries, is believed to be in itself unjust, and, as I have already observed, wholly inconsistent with the due maintenance of the treaty of 1849. The Pacific Mail Steamship Company have no right to demand an exclusive privilege in such carrying trade, but it may, with manifest propriety, under the terms of the treaty, insist that no discriminating measures against its vessels shall be maintained or permitted by the Hawaiian Government.

"You will present the subject to that Government in the light of these suggestions, and it is not doubted but that the enlightened sense of justice of His Hawaiian Majesty will at once enable him to see the possible injustice involved in the proposed arrangement, and that he will inaugurate the necessary measures to avert its being carried out."

Mr. Frelinghuysen, Sec. of State, to Mr. Daggett, Nov. 15. 1883. MSS. Inst., Hawaii; For. Rel., 1883.

"I have had the honor of receiving your note of the 18th of October last, inclosing a signed protest on the part of the Hawaiian Government against the annexation of archipelagoes and islands of Polynesia by foreign powers, and especially by Great Britain, in behalf of which protest the sympathies of this Government are asked.

"It is unnecessary to assure you that the sympathies of this Government and the people of this country are always in favor of good self-government by the independent communities of the world.

"While we could not, therefore, view with complacency any movement tending to the extinction of the national life of the intimately connected commonwealths of the Northern Pacific, the attitude of this Government towards the distant outlying groups of Polynesia is necessarily different.

"It is understood that the agitation to which the protest refers as now existing in Australia contemplates the immediate protection and eventual annexation of the New Hebrides, the Solomon Islands, and the immediately adjacent groups of the Australian colonial system. These islands are geographically allied to Australasia rather than to Polynesia. At no time have they so asserted and maintained a separate national life as to entitle them to entrance, by treaty stipulations and established forms of competent self-government, into the family of nations, as Hawaii and Samoa have done. Their material development has been largely due to their intercourse with the great Australian system, near which they lie, and this Government would not feel called upon to view with concern any further strengthening of such intercourse when neither

the sympathies of our people are touched nor their direct political or commercial relations with those scattered communities threatened by the proposed change.

"The President, before whom the protest has been brought, moved by these considerations, does not regard the matter as one calling for the interposition of the United States, either to oppose or support the suggested measure."

Mr. Frelinghuysen, Sec. of State, to Mr. Carter, Dec. 6, 1883. MSS. Notes, Hawaii.

The following Congressional documents may be referred to in this connection:

King Kalakaua's visit to United States, expenses incurred by United States, statement of. Dec. 9, 1875. Senate Ex. Doc. 2, 44th Cong., 1st sess.

Reciprocity treaty. President's message. Dec. 6, 1875. House Ex. Doc. 1, 44th Cong., 1st sess.

Views and objections to the bill to carry the treaty into effect. Favorable and adverse reports. Feb. 24, 1876. House Rep. 116, parts 1 and 2, 44th Cong., 1st sess.

Proclamation putting the treaty into effect. President's message. Dec. 9, 1875. House Ex. Doc. 1, 44th Cong., 2d sess.

Termination of treaty. Report recommending modifications in, instead of termination of, existing treaty. Jan. 16, 1883. House Rep. 1860, 47th Cong., 2nd sess. Jan. 29, 1883. Part 2, minority report.

Termination of treaty. Favorable report and minority report. Feb. 27, 1883. Senate Rep. 1013, 47th Cong., 2d sess. Adverse report. Jan. 24, 1884. Senate Rep. 76, 48th Cong. 1st sess. Jan. 24, 1884. Part 2, minority report.

See also speeches of Mr. Mitchell and of Mr. Morrill on the Hawaiian reciprocity treaty of 1875, Pamph., Dept. of State, and remarks of Messrs. Allen and Boutwell on the bill for the termination of that treaty, Pamph., Dept. of State; and pamphlet by Mr. Spalding on same topic, *id.*

(7) Samoa, Caroline, and other Pacific Islands.

§ 63

In March, 1872, certain commercial arrangements were made by Manga, chief of Tutuila, and Commander Meade, of the U. S. S. Narragansett, for the use of the port of Pango-Pango. According to a summary in the Nineteenth Century for February, 1886, "it was arranged that Pango-Pango should be given up to the American Government, on condition that a friendly alliance existed between that island and the United States. Pango-Pango Harbor has thus passed forever from the hands of the British."

For the agreement of Feb. 17, 1872, between Commander Meade, of the United States Navy, and the chief of the Island of Tutuila, one of the Samoan group, conferring on the United States the exclusive privilege of establishing a naval station in such island, see MSS. Report Book.

As to claims for spoliations by "wrongful acts of the commercial agent of the United States exercising authority," at Apia in 1855, see House Rep. No. 212, 35th Cong., 2d sess.; House Rep. No. 569, 36th Cong., 1st sess.; Senate Rep. Com. No. 148, 36th Cong., 1st sess.

"The Government of the Samoan Islands has sent an envoy, in the person of its secretary of state, to invite the Government of the United States to recognize and protect their independence, to establish commercial relations with their people, and to assist them in their steps toward regulated and responsible government. The inhabitants of these islands, having made considerable progress in Christian civilization and the development of trade, are doubtful of their ability to maintain peace and independence without the aid of some stronger power. The subject is deemed worthy of respectful attention, and the claims upon our assistance by this distant community will be carefully considered."

President Hayes, First Annual Message, 1877.

"The treaty with the Samoan Islands, having been duly ratified and accepted on the part of both Governments, is now in operation, and a survey and soundings of the harbor of Pango-Pango have been made by a naval vessel of the United States, with a view of its occupation as a naval station, if found desirable to the service."

President Hayes, Second Annual Message, 1878.

"A naval vessel has been sent to the Samoan Islands, to make surveys and take possession of the privileges ceded to the United States by Samoa in the harbor of Pango-Pango. A coaling-station is to be established there, which will be convenient and useful to United States vessels."

President Hayes, Third Annual Message, 1879.

"In Samoa, the Government of King Malietoa, under the support and recognition of the consular representatives of the United States, Great Britain, and Germany, seems to have given peace and tranquillity to the islands. While it does not appear desirable to adopt as a whole the scheme of tripartite local government, which has been proposed, the common interests of the three great treaty powers require harmony in their relations to the native frame of government, and this may be best secured by a simple diplomatic agreement between them. It would be well if the consular jurisdiction of our representative at Apia were increased in extent and importance so as to guard American interests in the surrounding and outlying islands of Oceanica."

President Hayes, Fourth Annual Message, 1880.

"The United States, the same as Germany and Great Britain, does not desire the triumph of any particular party, but the restoration of peace and order; and this Government further desires that peace and order be restored by the establishment of a firm, stable, independent native Government that will command the respect and support of natives and foreigners. There is nothing in any of the instructions of the Department to our consul at Apia to warrant any one party on the

ands more than another to believe that this Government was favorable to their cause; and the Department would regret to have such an impression prevail."

Mr. Evarts, Sec. of State, to Mr. von Thielmann, June 15, 1877. MSS. Notes, Germ.

"A naval station having in 1872 been established in the harbor of the Bay of Pango-Pango, under an agreement with the great chief of the bay, and the attention of the Government drawn by highly respectable commercial persons to the importance of the growing trade and commerce of the United States with the islands in the South Pacific Ocean, and to the opportunities of increasing our commercial relations in that quarter of the globe, it was determined, as the Samoan or Navigator Islands lay in the track of such trade, and were reputed to abound in good harbors and to be very fertile and their inhabitants friendly towards this Government, to send a special agent thither, for the purpose of making a thorough examination and report in regard to all the points on which it was desirable that this Government should be informed."

Mr. Evarts, Sec. of State, to Mr. Welsh, May 15, 1879. MSS. Inst., Gr. Brit.

As to special power conferred by the United States upon A. B. Steinberger, special agent to the Samoan Islands, see reports of Mr. Fish, Sec. of State, to President Grant, May 1, 1876 (sent by him to the House of Representatives). MSS. Report Book.

The following Congressional documents may be consulted in this relation:

Report as to the character of the island, the inhabitants, nature and quantity of the agricultural and other productions, the character of the harbors, and the form of Government, by A. B. Steinberger, special agent of the United States. President's message. Apr. 21, 1874. Senate Ex. Doc. 45, 43d Cong., 1st sess.—Further report. President's message. May 1, 1876. House Ex. Doc. 161, 44th Cong., first sess.

Further correspondence. President's message. Feb. 24, 1877. House Ex. Doc. 44, 44th Cong., 2d sess.

Political and commercial report of Gustavus Goward. President's message. Mar. 20, 1879. (Senate Ex. Doc. 2, 46th Cong., 1st sess.)

Steinberger's bargain of Sept. 10, 1874, with the house of Godeffroy & Son, of Hamburg, by which his influence in the Samoan Islands is made over to that house, is given in the Nineteenth Century for Feb., 1886, pp. 288, 289. The same periodical (p. 305) gives the German negotiations with Samoa.

"The Ralik group of islands in the Marshall Archipelago" "is understood to be under no foreign flag or protectorate, and to feel no foreign influence other than that of the resident consular officer, a German, and of the distant consular representatives at Samoa and Fiji, within the jurisdiction of which the Ralik Islands seem to fall." Hence this Government, in desiring to aid the native Government of those islands in the establishment, in connection with the missionaries, of temperance restrictions, can only do so through the agency of the German Government.

Mr. Evarts, Sec. of State, to Mr. White, Nov. 13, 1880. MSS. Inst., Germ.

"For your information I inclose a copy of an instruction recently sent to our legation at Madrid in regard to the mode of procedure by which the crimes alleged to have been committed by an American citizen on the Island of Guap, or Yap, might be reached and punished. This instruction (No. 381, of August 3, 1885, to Mr. Foster) abundantly shows that we not only have not the slightest purpose of asserting claim to the Caroline Islands in virtue of the large American interests established there, but that we seek to respect whatever sovereign jurisdiction may be established as existing there, without even indicating an opinion as to questions of legitimate controversy by either Spain or Germany."

Mr. Bayard, Sec. of State, to Mr. Pendleton, Sept. 7, 1885. MSS. Inst., Germ. The instruction to Mr. Foster, above referred to, had to do with the punishment of an alleged American trader for crimes against natives in his employ on the Island of Guap. After alluding to the difficulties in the way of reaching him, it was suggested that if, as was reported, orders had been issued at Madrid to establish the jurisdiction of Spain over the Caroline Islands, of which Guap was one, the Spanish authorities, if it be determined they have jurisdiction, could cause him to be arrested and brought to the nearest court competent to try the case.

"Your communication of the 17th instant, referring to this Department a letter addressed to you by Mr. A. Crawford, of San Francisco, in relation to the alleged action of Germany in claiming the sovereignty of the islands of the Samoan, Gilbert, and Marshall groups, has been received. In reply, I have the honor to inform you that we have no treaty relations with the Gilbert and Marshall Islands, or any knowledge of the intention of Germany with respect thereto, except the reports which reach us, with more or less authenticity, that Great Britain and Germany have agreed upon lines of division in the Pacific Ocean, by which determinate areas will be open to the exclusive settlement and control of the respective Governments. The case is different in Samoa, with which country we have established treaty relations. The German Government has repeatedly disclaimed any intention to interfere with these treaty relations in any way. The recently reported occurrences in Samoa are not as yet fully understood, and further knowledge is awaited before forming a definite judgment. As to the outlying unattached groups of islands, dependent upon no recognized sovereignty, and settled sporadically by representatives of many nationalities whose tenure depends on prior occupancy of inhabited territory or on a good understanding with the natives of the inhabited islands, we conceive that the rights of American settlers therein should rest on the same footing as others. We claim no exclusive jurisdiction in their behalf, and are not called upon to admit on the part of any other nationality rights which might operate to oust our citizens from rights which they may be found to share equally with others. In cases of actual annexation of such islands by any foreign power, we should expect that our citizens peace-

ably established there would be treated on a basis of equality with the citizens or subjects of such power. These views have been communicated to our ministers at London and Berlin for their guidance.

Mr. Bayard, Sec. of State, to Mr. Morrow, Feb. 26, 1886. MSS. Dom. Let.

"My recent instructions to you show the deep concern which this Government feels in the reported operations of Germany in the Samoan Islands, with which we have treaty relations. We have no treaty relations with the Marshall or Gilbert groups. They are understood to belong to the large category of hitherto unclaimed islands which have been under no asserted administration, and where the traders of various nationalities have obtained lodgment through good relations with the natives. Of the Gilbert Islands we have no precise information. Mr. von Alvensleben recently stated in conversation that the German claim to the Caroline Islands having been decided adversely, Germany would, instead, take possession of the Marshall group. It is understood, but informally so, that an arrangement exists between Great Britain and Germany whereby the two powers will confine their respective insular annexations in the Pacific Ocean within defined areas or zones, and that under this arrangement the Marshall Islands fall within the zone where Germany can operate without coming into collision with Great Britain.

"It is not easy to see how either Great Britain or Germany can assert the right to control and to divide between them insular possessions which have hitherto been free to the trade of all flags, and which owe the civilizing rudiments of social organization they possess to the settlement of pioneers of other nationalities than British or German. If colonial acquisition were an announced policy of the United States, it is clear that this country would have an equal right with Great Britain or Germany to assert a claim of possession in respect of islands settled by American citizens, either alone or on a footing of equality with British and German settlers.

"There are islands in the Pacific Ocean known to be wholly in the undisturbed possession of American citizens as peaceable settlers, and there are many others where American citizens have established themselves in common with other foreigners. We, of course, claim no exclusive jurisdictional right by reason of such occupancy, and are not called upon to admit it in the case of like occupancy by others.

"What we think we have a right to expect, and what we are confident will be cheerfully extended as a recognized right, is that interests found to have been created in favor of peaceful American settlers in those distant regions shall not be disturbed by the assertion of exclusive claims of territorial jurisdiction on the part of any power which has never put forth any show of administration therein; that their trade and intercourse shall not in any way be hampered or taxed otherwise than as are the trade and intercourse of the citizens or subjects of the

power asserting such exclusive jurisdiction, and, in short, that the equality of their tenancy jointly with others, or the validity of their tenancy where they may be the sole occupants, shall be admitted according to the established principles of equity and justice."

Mr. Bayard, Sec. of State, to Mr. Pendleton, Feb. 27, 1886. MSS. Inst., Germ.

"Nowhere were justice and the rights of the native inhabitants more cynically regarded than in Samoa by the great German trading firms. The people of that group belong to the finest of the Polynesian races. They are all nominally Christians, and have never deserved the title of 'savage' except in its acceptation of 'not civilized.' Unhappily tribal animosities and the machinations of interested and unscrupulous white men led to a series of wars. The combatants were anxious to procure fire-arms, and the traders declined to sell them except for land. The result was that between 1869 and 1872 not less than 100,000 acres passed into German ownership at a virtual cost of a few pence per acre. For much, not even this consideration was given. The ignorant natives were deluded into signing documents which they could not, in the least, understand, and which were held to give the white occupiers a secure title. At present the German land claims in Samoa comprise 232,000 acres. British subjects claim not less than 357,000. There is, however, this important difference between the positions of the German and the British claimants; the former have so far made their claims effective that they occupy and cultivate just as much of the soil as they can work, whilst the latter's exist only on paper and are not insisted on by our Government. * * * The preservation of the native races, whose diminution is hastened by the labor trade, is of vital importance to the white settlers in Oceania. England has attempted to protect the islanders, but not very successfully. Certain alterations in the law have been recommended, but it is doubtful if these, should they be made, will effect much. We concur with Baron Hübner in thinking that the only remedy is to be looked for in some international agreement, 'the terms of which should apply to all mankind living or moving in the archipelagoes or regions of the Western Pacific.' The precedent of Apia in Samoa is encouraging. That town and the immediate neighborhood are governed by a municipal board under the joint supervision of the consuls of Great Britain, Germany, and the United States. It still forms part of the dominions of the King of Samoa, but the administration is in 'the hands of the municipality and the consuls.'"

Edinburgh Rev., (July, 1886,) 87, 92.

As to title to Christmas Island, situated in the Pacific Ocean, see Mr. Evarts, Sec. of State, to Sir E. Thornton, Apr. 1, 1879. MSS. Notes, Gr. Brit.

As to Midway Islands, see Mr. Welles's report, July 18, 1868; Senate Ex. Doc. No. 79, 40th Cong., 2d sess.; Senate Rep. Com. No. 194, 40th Cong., 3d sess.

As to American Missions in the Caroline Islands, see Mr. Bayard, Sec. of State, to Mr. Pendleton, Sept. 7, 1885. MSS. Inst. Germ. *Supra*, § 54.

As to sovereignty of such islands, see instructions of same date, of same to same.

As to seizure by British Government of Tigre Island in the Gulf of Fonseca, Central America, see message of President Fillmore, of July 22, 1850, with accompanying papers, House Ex. Doc. No. 75, 31st Cong., 1st sess.

(8) *COREA.*

§ 64.

The independence of Corea of China is to be regarded by the United States as now established.

Mr. Frelinghuysen, Sec. of State, to Mr. Young, Aug. 4, 1882. MSS. Inst., China. See also Mr. Davis to Mr. Young, Jan. 22, 1883. *Ibid.*

"The existence of international relations between the two countries (the United States and Corea), as equal contracting parties, is to be viewed simply as an accepted fact."

Mr. Frelinghuysen, Sec. of State, to Mr. Young, June 9, 1883. *Ibid.*

"The United States, as you are aware, were the first western power to conclude a treaty with Corea. By reason of this fact, and perhaps to give greater emphasis to the friendship so happily initiated, the Corean Government sought the introduction into the treaty of the provision on which this application rests. It was admitted by us as evidence of our impartial desire to see the independence and peace of Corea well established. The second clause of Article I of the treaty of May 22, 1882, between the United States and Corea, reads thus:

"'If other powers deal unjustly or oppressively with either Government, the other will exert their good offices, on being informed of the case, to bring about an amicable arrangement, thus showing their friendly feelings.'

"Except that the provision is made reciprocal, it follows the phraseology of Article I of our treaty of 1858 with China.

"This Government could not, of course, construe the engagement thus entered into as empowering or requiring us to decide and maintain that the acts in respect to which good offices are desired are, in fact, *unjust* and *oppressive*. Such a construction would naturally render nugatory any attempt to derive good results from the engagement."

Mr. Bayard, Sec. of State, to Mr. Phelps, Aug. 19, 1885. MSS. Inst., Gr. Brit. See a series of interesting dispatches from Mr. Foulk, chargé d'affaires *ad interim*, at Corea, in For. Rel., 1885.

(9) FALKLAND ISLANDS.

§ 65.

The Government of the United States will protect citizens of the United States having fishing rights on the Falkland Islands from the interference of parties claiming under Buenos Ayres.

Mr. Livingston, Sec. of State, to Mr. Baylies, Jan. 26, 1832. MSS. Inst., Am. States. Same to same, Apr. 3, 1832. *Ibid.*

Vessels of the United States visiting the Falkland Islands have in them "customary privileges," which ought not to be abridged by arbitrary decrees of the British Government.

Mr. Marcy, Sec. of State, to Mr. Buchanan, Sept. 27, 1854. MSS. Inst., Gr. Brit.

The papers relative to the seizure by the British authorities at the Falkland Islands, in 1854, of the ship Hudson and schooner Washington, are given in the report of Mr. Fish, Sec. of State, Jan. 16, 1872, Senate Ex. Doc. No. 19, 42d Cong., 2d sess.

The correspondence with Buenos Ayres with respect to the Falkland Islands will be found in the Br. and For. St. Pap. for 1832–'3, vol. 20, 312.

"The Argentine Government has revived the long dormant question of the Falkland Islands, by claiming from the United States indemnity for their loss, attributed to the action of the commander of the sloop-of-war Lexington in breaking up a piratical colony on those islands in 1831, and their subsequent occupation by Great Britain. In view of the ample justification for the act of the Lexington, and the derelict condition of the islands before and after their alleged occupation by Argentine colonists, this Government considers the claim as wholly groundless."

President Cleveland, First Annual Message, 1885.

"The right of the Argentine Government to jurisdiction over it (the territory of the Falkland Islands), being contested by another power (Great Britain), and upon grounds of claim long antecedent to the acts of Captain Duncan which General Alvear details, it is conceived that the United States ought not, until the controversy upon the subject between those two Governments shall be settled, to give a final answer to General Alvear's note, involving, as that answer must, under existing circumstances, a departure from that which has hitherto been considered as the cardinal policy of this Government."

Mr. Webster, Sec. of State, to General Alvear, Dec. 4, 1841; quoted by Mr. Bayard, Sec. of State, to Mr. Quesada, Mar. 18, 1886. MSS. Notes, Arg. Rep.

"This Government is not a party to the controversy between the Argentine Republic and Great Britain; and it is for this reason that it has delayed, with the tacit consent of the former, a final answer to its demands. For it is conceived that the question of the liability of the United States to the Argentine Republic for the acts of Captain Duncan, in 1831, is so closely related to the question of sovereignty over the Falkland Islands, that the decision of the former question would inevitably be interpreted as an expression of opinion on the merits of the latter. Such an expression it is the desire of this Government to avoid, so far as an adequate reference to the points of argument presented in the notes recently addressed to this Department on the behalf of your Government will permit. * * *

"As the resumption of actual occupation of the Falkland Islands by Great Britain in 1833 took place under a claim of title which had been

previously asserted and maintained by that Government, it is not seen that the Monroe doctrine, which has been invoked on the part of the Argentine Republic, has any application to the case. By the terms in which that principle of international conduct was announced, it was expressly excluded from retroactive operation.

"If the circumstances had been different, and the acts of the British Government had been in violation of that doctrine, this Government could never regard its failure to assert it as creating any liability to another power for injuries it may have sustained in consequence of the omission. * * *

"But it is believed that, even if it could be shown that the Argentine Republic possesses the rightful title to the sovereignty of the Falkland Islands, there would not be wanting ample grounds upon which the conduct of Captain Duncan in 1831 could be defended. * * *

"On the whole, it is not seen that the United States committed any invasion of the just rights of the Government of Buenos Ayres in putting an end in 1831 to Vernet's lawless aggressions upon the persons and property of our citizens."

Mr. Bayard, Sec. of State, to Mr. Quesada, Mar. 18, 1886. MSS. Notes, Arg. Rep.

The President, in a message to Congress, and in the correspondence carried on with the Government of Buenos Ayres, having denied the jurisdiction of that country over the Falkland Islands, the courts must take the facts to be so.

Williams *v.* Suffolk Insurance Company, 13 Pet., 415.

Where an officer of the Navy, without instructions from his Government, seized property in the Falkland Islands, claimed by citizens of the United States, which, it was alleged, had been piratically taken by a person pretending to be governor of the islands, it was held, that such officer had no right, without express direction from his Government, to enter the territoriality of a country at peace with the United States and seize property found there claimed by citizens of the United States. Application for redress should have been made to the judicial tribunals of the country.

Davison *v.* Seal-skins, 2 Paine, 324.

(10) LIBERIA.

§ 66.

"The United States are not averse to having the great powers know that they publicly recognize the peculiar relations between them and Liberia, and that they are prepared to take every proper step to maintain them. To this end, it is not inexpedient that you, and Mr. Lowell also on his return to his post from his present leave, should evince a lively interest in the movements of both Great Britain and France in

the neighborhood of Liberia, without, however, showing any undue anxiety or offensive curiosity in the matter."

Mr. Evarts, Sec. of State, to Mr. Hoppin, Apr. 21, 1880. MSS. Inst., Gr. Brit.
As to suggested French "protectorate of Liberia," see Mr. Evarts, Sec. of State, to Mr. Noyes, Apr. 21, 1880, and preceding instructions. MSS. Inst., France.

"On the 14th instant, in a conference with me, the minister of Germany at this capital stated that in October last the German steamer Carlos, Capt. P. C. Nickelsen, with a cargo from Hamburg for Lagos, via Sasstown, fell into distress on the coast of Liberia; that the natives of the coast of the "Kronbah" tribe took advantage of the helpless condition of the vessel to plunder her of the greater part of her cargo, besides robbing and maltreating her crew, who sought to escape in the vessel's life-boats; and that the Liberian Government showed the sincerest wish to punish such proceedings, but declared itself unable to exert authority to that end over the lawless Kronbahs. Under these circumstances Mr. Von Schlözer said that the German Government had ordered the Victoria of the imperial navy to proceed to Liberia and there assist the Government of that Republic in the pursuit and punishment of the offenders, as a step in the general interest of all commercial nations. He at the same time asked that you might be informed of the occurrence, and of the purpose of his Government in the premises.

"It is not understood that the coast-dwellers who committed this injury on a peaceable foreign vessel and her crew are unsubdued rebels to the Liberian Government, or pirates in the common international acceptation of the term; but it is inferred that they are simply lawless wreckers, outside of the prompt and efficacious control of the central Government. In this view, and to the end of securing foreign life and property from inhospitable attacks on the coast in question, it is presumed that the Liberian Government would gladly avail itself of any proper and friendly aid from without in making its own laws and power felt within its own jurisdiction.

"Should the Liberian minister of state consult with you on this point in view of the attitude of advisory friendliness which this Government has constantly maintained toward that of Liberia, you are at liberty to express to him the view of the matter entertained here, adding that had the case affected an American vessel and crew, this Government would not have failed to consider in a proper spirit any request made to it by that of Liberia for aid such as Germany is now prepared to render.

"It is not, however, needful for you to make any such statement in advance of the subject being brought to your attention."

Mr. Evarts, Sec. of State, to Mr. Smyth, Feb. 28, 1881. MSS. Inst., Liberia; For. Rel., 1881.

The treaty of the United States with Liberia does not authorize or require the United States to interfere with their naval forces to preserve order or to compel obedience to law in Liberia.

Mr. Evarts, Sec. of State, to Mr. Smyth, July 12, 1879. MSS. Inst., Liberia.

Nor should the United States minister at Liberia interfere with the Government thereof by obtruding political advice.

Same to same, Jan. 7, 1880, But see Mr. Blaine, Sec. of State, to Mr. Smyth, June 27, 1881, *ibid.*

Liberia, although not a colony of the United States, began its independent career as an offshoot of this country, which bears to it a *quasi* parental relationship which authorizes the United States to interpose its good offices in any contest between Liberia and a foreign state, and a refusal to give the United States an opportunity to be heard for this purpose would make "an unfavorable impression in the minds of the Government and the people of the United States."

Mr. Frelinghuysen, Sec. of State, to Mr. Roustan, Aug. 22, 1884. MSS. Notes, France.

Report adverse to providing means to make survey for a railroad in Liberia was made Mar. 5, 1878. House Rep. 349, 45th Cong., 2d sess.

Memorial asking that a survey be made for a railroad in Liberia. Feb. 12, 1879. Senate Mis. Doc. 67, 45th Cong., 3d sess.

As to boundaries of Liberia, see Mr. Davis, Asst. Sec. of State, to Mr. Lowell, Sept. 15, 1882; Mr. Frelinghuysen, Sec. of State, to Mr. Lowell, Apr. 9, 1883, Aug. 19, 1884; MSS. Inst., Gr. Brit.; Mr. Frelinghuysen, Sec. of State, to Mr. Smyth, Dec. 21, 1882, Apr. 8, 1883 and June 19, 1883. MSS. Inst., Liberia.

Mr. Gurley's report of Feb. 15, 1850, on the then condition of Liberia is given in Senate Ex. Doc. No. 75, 31st Cong., 1st sess.

(11) China.

§ 67.

For consular jurisdiction in China, see *infra*, § 125; as to treaties with China, *infra*, § 144.

President Van Buren's message of Feb. 25, 1840, introducing an elaborate report of the Secretary of State on the state of American trade with China, is given in House Ex. Doc. No. 119, 20th Cong., 1st sess. See also House Doc. No. 170, same Congress.

President Tyler's message of Dec. 30, 1842, in relation to China and the Sandwich Islands, was written by Mr. Webster, 2 Curtis' Life of Webster, 176.

"You will state, in the fullest manner, the acknowledgment of the Government that the commercial regulations of the Empire, having become fairly and fully known, ought to be respected by all ships and all persons visiting its ports; and if citizens of the United States, under these circumstances, are found violating well known laws of trade, their Government will not interfere to protect them from the consequences of their own illegal conduct. You will, at the same time, assert and maintain, on all occasions, the equality and independence of your own country. The Chinese are apt to speak of persons coming into the Empire from other nations as tribute bearers to the Emperor.

This idea has been fostered perhaps by the costly parade embassies of England. All ideas of this kind, respecting your mission, must, should they arise, be immediately met by a declaration, not made ostentatiously, or in a manner reproachful towards others, that you are no tribute-bearer; that your Government pays tribute to none and expects tribute from none; and that even as to presents, your Government neither makes nor accepts presents. * * *

"You will say that the Government of the United States is always controlled by a sense of religion and of honor; that nations differ in their religious opinions and observances; that you cannot do anything which the religion of your own country, or the sentiments of honor, forbid; that you have the most profound respect for His Majesty the Emperor; that you are ready to make to him all manifestations of homage which are consistent with your own sense; and that you are sure His Majesty is too just to desire you to violate your own duty; that you should deem yourself quite unworthy to appear before His Majesty as peace-bearer from a great and powerful nation, if you should do anything against religion or against honor, as understood by the Government and people in the country you came from. Taking care thus in no way to allow the Government or people of China to consider you as tribute-bearer from your Government, or as acknowledging its inferiority, in any respect, to that of China, or any other nation, you will bear in mind, at the same time, what is due to your own personal dignity and the character which you bear. You will represent to the Chinese authorities, nevertheless, that you are directed to pay to His Majesty the Emperor the same marks of respect and homage as are paid by your Government to His Majesty the Emperor of Russia, or any other of the great powers of the world."

Mr. Webster, Sec. of State, to Mr. Cushing, May 8, 1843. MSS. Inst., China.

The participation, by a consul of the United States in China, in the opium trade, after notice forbidding such participation, is ground for his dismissal.

Mr. Legaré, Sec. of State, to Mr. Cushing, June 12, 1843. MSS. Inst., China.

"I entered China with the formed general conviction that the United States ought not to concede to any foreign state, under any circumstances, jurisdiction over the life and liberty of a citizen of the United States, unless that foreign state be of our own family of nations—in a word, a Christian state. In China I found that Great Britain had stipulated for the absolute exemption of her subjects from the jurisdiction of the Empire; while the Portuguese attain the same object through their own local jurisdiction at Macao. This exemption in behalf of citizens of the United States is agreed to in terms by the letter of the treaty of Wang-Hiya. By that treaty the laws of the Union follow its citizens,

and its banner protects them, even within the domain of the Chinese Empire."

Mr. Cushing to Mr. Calhoun, Sept. 29, 1844. MSS. Despatches China. Cited in Lawrence's Wheaton (ed. 1863), 223.

As to consular jurisdiction in China, see *infra*, § 125.

In cases of aggravated crimes by citizens of the United States in China after the treaty giving jurisdiction of such cases to United States consuls, but before Congressional legislation, the minister of the United States at China was instructed to send the criminals inculpated to the United States for trial.

Mr. Buchanan, Sec. of State, to Mr. A. H. Everett, Apr. 15, 1845. MSS. Inst. China.

When an attack is threatened on a consulate or diplomatic agency in China, it is the duty of the officers in charge to give notice to the local authorities, and, in failure of adequate aid, such officers may take the defense in their own hands. The Chinese Government will afterwards be held liable for any losses occurring from its neglect to give efficient aid.

Mr. Buchanan, Sec. of State, to Mr. A. H. Everett, Jan. 28, 1847. MSS. Inst., China.

The message of President Pierce of July 19, 1854, containing the correspondence between the Department of State and the late commissioner to China, Mr. Humphrey Marshall, is contained in House Ex. Doc. No. 123, 33d Cong., 1st sess.

"It is difficult to lay down any precise rule for regulating the trade of our citizens with the hostile sections of the people of China. While they should not traffic in the plunder that one party may have seized from the other, yet they ought not to be restricted in a free trade at any of the ports opened to them by our treaty under the pretext that such a trade is more favorable to one party than to the other. It would be well if our citizens confined themselves to their customary mode of dealing in China. The purchase of property known to be the spoils of the contending parties would undoubtedly be regarded as a species of participation in the civil conflict. It ought to be discountenanced and restrained."

Mr. Marcy, Sec. of State, to Mr. Parker, Oct. 5, 1855. MSS. Inst., China.

The Chinese Government having obstinately and persistently refused to pay a claim for personal damages admitted to be due a citizen of the United States, instructions were sent in 1855 to the United States minister at China, at his discretion, "to resort to the measure of withholding duties to the amount thereof."

Mr. Marcy, Sec. of State, to Mr. Parker, Oct. 5, 1855. MSS. Inst., China.

The display of the American flag in the attack by the British on Canton in 1856 was, if the act of an American functionary, an act calling for his removal.

Mr. Marcy, Sec. of State, to Mr. Parker, Feb. 2, 1857. MSS. Inst., China.

"The effort of the Chinese Government to prevent the importation and consumption of opium was a praiseworthy measure, rendered necessary by the prevalent use and the terrible effects of that deleterious drug. All accounts agree as to the magnitude of the evil and the widespread desolation caused by it. Upon proper occasions you will make known to the Chinese officers with whom you may have communication that the Government of the United States does not seek for their citizens the legal establishment of the opium trade, nor will it uphold them in any attempt to violate the laws of China by the introduction of that article into the country."

Mr. Cass, Sec. of State, to Mr. Reed, May 30, 1857. MSS. Inst., China.

The proposition of Mr. Reed, United States minister in 1858 to China, to "unite with the English and French in their hostile movements" to compel the Chinese Government to fulfill its treaty obligations, was held to be inadmissible without the consent of Congress.

Mr. Cass, Sec. of State, to Mr. Reed, 1858 (no other date). MSS. Inst., China.

"You were informed by my last annual message that our minister had been instructed to occupy a neutral position in the hostilities conducted by Great Britain and France against Canton. He was, however, at the same time, directed to co-operate cordially with the British and French ministers in all peaceful measures to secure by treaty those just concessions to foreign commerce which the nations of the world had a right to demand. It was impossible for me to proceed further than this, on my own authority, without usurping the war-making power, which, under the Constitution, belongs exclusively to Congress.

"Besides, after a careful examination of the nature and extent of our grievances, I did not believe they were of such a pressing and aggravated character as would have justified Congress in declaring war against the Chinese Empire without first making another earnest attempt to adjust them by peaceful negotiation. I was the more inclined to this opinion, because of the severe chastisement which had then but recently been inflicted upon the Chinese by our squadron in the capture and destruction of the Barrier forts to avenge an alleged insult to our flag.

"The event has proved the wisdom of our neutrality. Our minister has executed his instructions with eminent skill and ability. In conjunction with the Russian plenipotentiary, he has peacefully, but effectually, co-operated with the English and French plenipotentiaries; and each of the four powers has concluded a separate treaty with China, of a highly satisfactory character. The treaty concluded by our plenipotentiary will immediately be submitted to the Senate.

"I am happy to announce that, through the energetic yet conciliatory efforts of our consul-general in Japan, a new treaty has been concluded with that Empire, which may be expected materially to augment our trade and intercourse in that quarter, and remove from our coun-

trymen the disabilities which have heretofore been imposed upon the exercise of their religion. The treaty shall be submitted to the Senate for approval without delay."

President Buchanan, Second Annual Message, 1858. See for treaty, *infra*, § 144.
President Buchanan's message, of Dec. 20, 1858, containing correspondence of Messrs. McLane and Parker, commissioners in China, is given in Senate Ex. Doc. No. 22, 35th Cong., 2d sess.
Instructions to Mr. Wm. B. Reed, Minister to China, are given in Senate Ex. Doc., No. 47, 35th Cong., 1st sess. See also Senate Ex. Doc. No. 30, 36th Cong., 1st sess., for further instructions.

"The friendly and peaceful policy pursued by the Government of the United States towards the Empire of China has produced the most satisfactory results. The treaty of Tien-Tsin of the 18th June, 1858, has been faithfully observed by the Chinese authorities. The convention of the 8th November, 1858, supplementary to this treaty for the adjustment and satisfaction of the claims of our citizens on China, referred to in my last annual message, has been already carried into effect, so far as this was practicable. Under this convention the sum of 500,000 taels, equal to about $700,000, was stipulated to be paid in satisfaction of the claims of American citizens out of the one-fifth of the receipts for tonnage, import, and export duties on American vessels at the ports of Canton, Shanghai, Foo-Chow; and it was 'agreed that this amount shall be in full liquidation of all claims of American citizens at the various ports to this date.' Debentures for this amount, to wit, 300,000 taels for Canton, 100,000 for Shanghai, and 100,000 for Foo-Chow, were delivered, according to the terms of the convention, by the respective Chinese collectors of the customs of these ports to the agent selected by our minister to receive the same. Since that time the claims of our citizens have been adjusted by the board of commissioners appointed for that purpose under the act of March 3, 1859, and their awards, which proved satisfactory to the claimants, have been approved by our minister. In the aggregate they amount to the sum of $498,694.78. The claimants have already received a large proportion of the sums awarded to them out of the fund provided, and it is confidently expected that the remainder will, ere long, be entirely paid. After the awards shall have been satisfied, there will remain a surplus of more than $200,000 at the disposition of Congress. As this will in equity belong to the Chinese Government, would not justice require its appropriation to some benevolent object in which the Chinese may be specially interested?"

President Buchanan, Fourth Annual Message, 1860.

"Your dispatch of December 24, No. 6, has been received. It gives us an account of the capture and occupation of the city of Ningpo by rebels, and of the proceedings adopted on that occasion by the American consul there in concert with the British and French representatives.

"No one here could draw any inference of the condition of things at

Ningpo now, from even the fullest information of what it was so long ago. Revolutions are apt to effect sudden and even great changes in very short periods. In such a case you ought not to be trammeled with arbitrary instructions, especially in view of the peculiar character and habits of the Chinese people and Government. In a different case the President would certainly instruct you to refrain most carefully from adopting any means which might disturb the confidence of the Imperial Government or give it any cause of solicitude, even though it might seem to be required for the safety of the property and interests of American citizens. But how can we know here what ability the Imperial Government may have, or even what disposition, to extend the protection to foreigners which it had stipulated? Nevertheless, I think that it is your duty to act in the spirit which governs us in our intercourse with all friendly nations, and especially to lend no aid, encouragement, or countenance to sedition or rebellion against the Imperial authority. This direction, however, must not be followed so far as to put in jeopardy the lives or property of American citizens in China. Great Britain and France are not only represented in China by diplomatic agents, but their agents are supported by land and naval forces, while, unfortunately, you are not. The interests of this country in China, so far as I understand them, are identical with those of the two other nations I have mentioned. There is no reason to doubt that the British and French ministers are acting in such a manner as will best promote the interests of all the western nations. You are therefore instructed to consult and co-operate with them, unless, in special cases, there shall be very satisfactory reasons for separating from them, and in every aspect of affairs you will keep me well advised. Our domestic affairs are improving very rapidly, and I trust we shall soon be able to send a war steamer to your support."

Mr. Seward, Sec. of State, to Mr. Burlingame, Mar. 6, 1862. MSS. Inst., China; Dip. Corr., 1862.

In default of protection from the local authorities, the officers of United States consulates in China are entitled to provide themselves with and use fire-arms to defend themselves from mob attack.

Mr. Seward, Sec. of State, to Mr. Williams, Aug. 15, 1866. MSS. Inst., China.

Consuls in China should report to the legation all cases tending to bring on a conflict and wait instructions before resorting to force; and the legation, before resorting to force, should make an earnest representation to the Chinese Government.

Mr. Seward, Sec. of State, to Mr. Williams, Nov. 20, 1866. MSS. Inst., China.

The assumption by the Chinese Government of jurisdiction in suits, civil or criminal, against citizens of the United States in China is in conflict with the treaty of June 18, 1858, and will not be permitted by the Government of the United States.

Mr. Seward, Sec. of State, to Mr. Browne, Feb. 18, 1869. MSS. Inst., China.

"Referring again to your dispatch, No. 8, of the 4th of May last, I propose to give briefly the views of the Department as to the policy to be pursued toward China.

"I am induced to do this mainly because the chargé d'affaires of North Germany has, under instructions from his Government, inquired of me whether the President still adheres to the principles established by the additional articles to the treaty of June 18, 1858, which were concluded July 28, 1868. That Government has on several occasions manifested a desire to harmonize its policy with ours in the Pacific. While I have freely communicated to Mr. Krause the views which we entertain, and have gone so far as to read to him copious extracts from the communications of Mr. Browne, and Mr. George Seward, from China, I thought as you are soon to meet Mr. Burlingame and his colleagues, it may be well to give you a little more in detail the views of the President on this question. The great principle which underlies the articles of July, 1868, is the recognition of the sovereign authority of the Imperial Government of Pekin over the people of the Chinese Empire, and over their social, commercial, and political relations with the western powers. Although it is true that many of the Christian Governments, including the United States, had before then concluded treaties with the Imperial Government, yet it is scarcely exaggeration to say that their relations at that time were rather those of force than of amity.

"The commercial foothold along the coast had been gained by conflict or by demonstrations of force, and were held in the same way. The occupation which, orginally hostile, had become commercial—and so far friendly, as the relations of commerce demanded a show of amity—aimed in the commencement, with some European settlers, at territorial acquisition; but this tendency had been checked by the rivalry of different nationalities, until the foreign jurisdiction, more by the tacit consent of the foreigners than from any active power exercised by the Chinese, had become limited to the essential matters of the municipal government of the communities of Europeans and the exercise of jurisdiction over their persons and properties. The communication between China and the outside world was merely confined to the trading points. With the intellects that rule that nation of 450,000,000 of people, with the men who gave it its ideas and directed its policy, with its vast internal industries, with its great agricultural population, the traders, consuls, and functionaries of the ports rarely came in contact except in the contact of war. The European Chinese policy was one of isolation, inasmuch as it only sought the development of a foreign trade at certain particular ports, and of disintegration, as it practically ignored the central Government, and made war upon the provinces to redress its grievances and to enforce its demands.

"It is true, indeed, that by the treaty of Tien-Tsin, in 1858, the privilege was secured to the United States and the European powers to maintain legations at Pekin, and that for the ten years that followed

diplomatic representatives resided there. It is also true that from that residence and the contact with the higher Chinese officials there has come a better knowledge of the Chinese nation, and of the relation between its people and its Government; but it is none the less true that those treaties closed a war which resulted disastrously to China; that before their ratifications could be exchanged another war became necessary to enforce them; that the concessions they contained were forced from the Imperial Government; that the new policy was not favored by the Chinese statesmen; that it did not measurably increase the personal intercourse between the natives and the Europeans; and that many of the wisest of the Chinese rulers honestly dreaded any increase in such intercourse, as tending to the introduction in China of the labor-saving machines of the west, which, in their judgment, would throw multitudes of people in their thickly-settled country out of employment, reduce them to beggary and starvation, and inflict irreparable woes on China. For an able and temperate statement of these views by a person who is described by Mr. Browne as a man 'of acknowledged ability and commanding influence,' 'who is regarded as the most enlightened statesman of the Empire,' I refer you to the remarkable inclosure, marked No. 1, which I shall subsequently allude to further. To say that such views are fallacious and obsolete; that they are confuted by the experience of western nations like England and Belgium, which have as great a population to the square mile as China; that they are opposed to all sound theories of political economy, does not meet the case. The facts remain that they did at one time control the policy of China, and that they are still adhered to by many of her leading statesmen; and in dealing with this question these facts must not be lost sight of.

"The treaty negotiated by Mr. Burlingame and his colleagues was a long step in another direction. It came voluntarily from China, and placed that power in theory on the same diplomatic footing with the nations of the western world. It recognizes the Imperial Government as the power to withhold or to grant further commercial privileges, and also as the power whose duty it is to enforce the peaceful enjoyment of the rights already conferred.

"While it confirms the interterritorial jurisdiction conferred by former treaties upon European and American functionaries over the persons and properties of their countrymen, it recognizes at the same time the territorial integrity of China, and prevents such a jurisdiction from being stretched beyond its original purpose. While it leaves in China the sovereign power of granting to foreigners hereafter the right to construct lines of railroads and telegraphs, of opening mines, of navigating the rivers of the Empire with steamers, and of otherwise increasing the outlets for its wealth, by the use of the appliances of western civilization, it contemplates that China shall avail herself of these appliances by reasonable concessions, to be made as public necessities and

the power of the Government to influence public opinion will permit. This treaty has not yet been ratified by the Imperial Government, and I am informed by Mr. Browne that Prince Kung 'deems it advisable to defer the exchange of ratifications till the return of the Chinese plenipotentiaries.' Mr. Browne does not 'infer any slight to our Government from this delay, or any want of appreciation of its friendship,' and he thinks that 'the true cause of the delay may be found in the peculiar attitude of China toward all the treaty powers.' 'When the Government of China,' he adds, 'is satisfied that it will not be injurious to its interests to accept these articles, it will do so.'

"The President has been disposed to view this matter in the same light, and, therefore, has not pressed for a ratification, feeling confident that, as the treaty is so much in the interest of China, the statesmen of that Empire must inevitably see the propriety of authorizing the ratifications to be exchanged. Rumors reach us by telegraph from Hong-Kong, by way of London, that the Imperial Government have decided not to ratify this treaty, but we are not inclined to credit them, as they are opposed to the general tenor of our information. Some things have taken place, however, which, regarded by themselves, tend to lead us to the conclusion that it is possible that China may reverse her policy; and in order that you may have full information on this subject, it is proper that I should briefly state them.

"Not long after the treaties of Tien-Tsin, what is known as the co-operative policy of the great powers in China began; I think this dates from about the year 1863, but it is immaterial for my present purpose whether it began earlier or later. Under this policy, favored by the fact that most or all of the treaties with the western powers contained the most-favored-nation clause, the Christian communities of all nationalities in China have been regarded as having a common political as well as commercial interest, to be pursued under joint counsels, and it has followed from this that in important matters the Chinese officials have been made to see, sometimes even with a show of ostentation, that there was a substantial unity of design among all the powers. The apprehension has been expressed lest the operation of the eighth article of the treaty of July should put a stop to this co-operative policy; and I am bound to say that, so far as that policy was aggressive and attempted to force upon China measures which could not be enforced upon a European or American state by the rules of the equitable code which regulates the intercourse of civilized nations, in my judgment, that article may, when ratifications are exchanged, prevent the United States from participating in such a policy.

"The question becomes a practical one from the fact that the revision of the British treaty of 1858 is under consideration. The twenty-seventh article of that treaty provided that either party might 'demand a further revision of the tariff and of the commercial articles of the treaty at the end of ten years; but if no demand be made on either side within six

months after the end of the first ten years, then the tariff shall remain in force for ten years more, reckoned from the end of the preceding ten years.'

"The thirtieth article of the treaty between China and the United States of 1858 provides that 'should at any time the Ta-Tsing Empire grant to any nation, or the merchants or citizens of any nation, any right, privilege, or favor, connected either with navigation, commerce, political, and other intercourse, which is not conferred by this treaty, such right, privilege, or favor shall at once inure to the benefit of the United States, its public officers, merchants, and citizens.' Thus the United States became directly interested in the revision of the British concessions.

"It being well understood that Great Britain would, when the time came, demand, among other things, the right to navigate the interior waters of the Empire with steam, the right to construct and to hire warehouses in the interior for the storage of goods, and the right to work coal mines, the Government at Pekin, on the 12th of October, 1867, took steps to get information from the different parts of the Empire upon the subject of the revision. Among others, Tsang-Kwohfan, acting governor of the provinces of Kiangru, Nganhioui, and Kiangri, 'a man over seventy years of age and of distinguished reputation throughout the Empire,' received these instructions, and made, in answer to them, the able report, to the copy of which, herewith inclosed, marked No. 1, I have already called your attention.

"Though the work of a conservative mind that clings to the traditions of the past, and sees few good results in change, it is moderate and temperate, and must be conceded to be, from the Chinese standpoint, a not unwise view of the subject. With all its conservatism it is easy to trace in it the enlarging and modifying influences of contact with the west.

"In substance, however, it recommends the Emperor's advisers not to grant the important new concessions asked for by the Government of Great Britain.

"In November last the expected demands were made on the part of Great Britain by Sir Rutherford Alcock, in a personal interview with Prince Kung and some of the other ministers. They were made in strong language, as necessary to the proper enjoyment of the rights conceded by the treaty of 1858, and the Chinese Government was warned in advance of the probable course Great Britain would pursue in case of refusal. The American minister gave Sir Rutherford Alcock the support of his presence at the interview, and afterward received from Sir Rutherford full copies of an account of it which was drawn up in the British legation and transmitted to Prince Kung. I inclose, marked No. 2 and No. 3, copies of these documents.

"Prince Kung, on his part, soon replied in a dignified and moderate way to the peremptory demands of Sir Rutherford Alcock. He ad

mitted the substantial accuracy of Sir Rutherford's account of the interview. He said that China and Great Britain could not be coerced into a similarity, neither could either wholly adopt the usages of the other. He deprecated the entire submission of China to the demands of the foreign merchants. He denied that there had been willful violations of the treaty. He stated, in detail, many points in which China is prepared to make concessions, which will, he thinks, give to the foreign merchants all they ought to ask. But to admit steamers on the interior lakes and rivers, to establish hongs, and to carry on mining operations in the interior, will, in the judgment of the Prince, be so distasteful to the people that it will be impracticable for the Government to attempt to carry out the terms of such a concession should it be made; and Great Britain, in that case, would have just cause to upbraid China for bad faith.

"To the representation that these concessions would be beneficial to China, the Prince replies that a good physician ascertains the condition of his patient before deciding on the remedies, and intimates that he knows the condition of China better than Sir Rutherford Alcock does; and he closes by furnishing the British envoy with a memorandum of the basis for a revision which will be acceptable to the Chinese Government. I inclose copies of these papers, marked No. 4 and No. 6.

"As Mr. Browne had, in pursuance of the co-operative policy, interfered personally and in writing (see inclosure No. 5) on behalf of the British claim for a revision, Prince Kung, about the same time, addressed a note to him, of which I inclose a copy (No. 7).

"The basis for a revision, which was proposed by the Chinese Government, conceded the opening of landing stages on the Yangtse at points to be agreed upon; the working of mines in the vicinity of one or more of the treaty ports; the right of inland navigation by vessels not propelled by steam, this restriction to cease when Chinese use vessels propelled by steam; a steam-tug on the Poyang Lake; and the free right to travel throughout the land, and to hire lodgings and accommodations for produce or goods.

"Mr. Ross Browne, who sympathized and co-operated with the British minister throughout the negotiations, appears to think that the points gained may become of importance as a starting point for negotiations hereafter. I inclose you a copy of his letter to Sir Rutherford Alcock on the subject (No. 8).

"The British minister at Washington, on the 9th day of June last, notified the United States of the decision of Her Majesty's Government on this subject, by which it would appear that they have decided to accept the situation and wait quietly the operation of the causes which are working in the Chinese mind. I inclose (marked No. 9) a copy of an extract from a letter from the board of trade, which has been sent to Sir Rutherford Alcock for his guidance. Such course strikes me as wiser than the more vigorous policy which Sir Rutherford Alcock seems

to have contemplated. The points gained may not be as important as could be desired, yet they have been gained peaceably, by negotiation, and are yielded by China as a right flowing legitimately and necessarily from former treaties.

"It certainly looks, on the face of this correspondence, as if the conduct of the Emperor's ministers had been inspired from the first by a sense of duty, by a desire to observe good faith toward the western powers, and by a willingness to extend commercial relations with those powers, when they felt that they could do so without prejudice to their own position and without injury to the people whose government was intrusted to them.

"I will not dwell upon the obvious difficulty of inoculating new ideas upon such a people, nor upon the evident fact that intelligent statesmen like Prince Kung and his associates measure those difficulties quite up to their full value.

"Every consideration, from whatever point of view, leads me to believe that it is neither wise nor just to force the Emperor's advisers into a position of hostility so long as we have cause to think that they are willing to accept the present situation, and to march forward, although with the prudence taught them by a Chinese education. You will undoubtedly meet Mr. Burlingame and his associates in Berlin. You will, if you please, ascertain from him whether he has definite information as to the intentions of the ministry at Pekin. Unless it shall appear that they have already decided not to ratify the treaty of 1868, or unless you shall be satisfied that such will be their decision, and that the policy inaugurated by Mr. Burlingame is to be reversed, you will render him and his associates whatever assistance you can, in securing the co-operation of North Germany in the new Chinese policy. You will also doubtless have an opportunity to impress upon Mr. Burlingame the importance to China of an early ratification of the treaties. I have stated already that the President has no solicitude as to the purpose of the Emperor's advisers in that respect. But he thinks it would be well to have defined in a permanent law, as soon as possible, the relations that are hereafter to exist between the United States and China.

"Many considerations call for this beside those which may be deduced from what has gone before in this instruction. Every month brings thousands of Chinese immigrants to the Pacific Coast. Already they have crossed the great mountains, and are beginning to be found in the interior of the continent. By their assiduity, patience, and fidelity, and by their intelligence, they earn the good-will and confidence of those who employ them. We have good reason to think that this thing will continue and increase. On the other hand, in China there will be an increase in the resident American and European population, not by any means commensurate with the growth of the Chinese immigration to this country, but corresponding with the growth of our country, with

the development of its resources on the Pacific slope, and with the new position in the commerce of the world which it takes with the completion of the Pacific Railroad. These foreigners settling in China, occupying the various quarters assigned to them, exercising municipal rights over these quarters by virtue of land regulations, either made by them or for them, by their home Governments, cease to be an aggressive element in China, when once the principles of the treaty of July, 1868, are promulgated as the law hereafter to regulate the relations between Christendom and that ancient Empire. You will also say to Mr. Burlingame that, while the President cordially gives his adhesion to the principles of the treaty of 1868, and while he will, should that instrument be ratified by China, cause it to be faithfully observed by the United States, yet he earnestly hopes that the advisers of His Majesty the Emperor may soon see their way clear to counsel the granting of some concessions similar to those asked for by Sir Rutherford Alcock and Mr. Ross Browne. He will not assume to judge whether the temper of the people of China will or will not at present justify their rulers in doing so; but he thinks that he may, without impropriety, say, that when it can be done without disturbing the good order of the Empire, the results must be eminently favorable to the welfare and well-being of the Chinese people. And he trusts that the statesmen of China, enlightened by the experience of other nations, will hasten at the earliest moment, when in their judgment it can safely be done, to respond to the friendly feeling and good wishes of the United States by moderating the restrictions which fetter the commerce of the great Empire over whose destinies they preside. He relies upon Mr. Burlingame and his associates to impress upon their chiefs at home that the views of such men as Tsang Kevohfan, however honest, are delusive; that experience, patent before them in every country through which they travel, has shown them that the evils which seem to be dreaded by the oriental rulers do not follow the free use of steam and of the telegraph; but that, while these inventions improve the condition of all ranks in the community which uses them, their greatest meliorating influence is felt among the laboring classes.

"Since writing the foregoing instructions, I have received from Mr. Burlingame a telegraphic dispatch dated August 31, 1869, in which he says: 'I have received a dispatch from the Chinese Government expressing strongly their satisfaction with, and acceptance of, the treaty negotiated at Washington.'"

Mr. Fish, Sec. of State, to Mr. Bancroft, Aug. 31, 1869. MSS. Inst., Germ. For. Rel., 1870.

"It was deemed advisable last summer to acquaint Mr. Bancroft, in anticipation of the arrival of the Chinese mission at Berlin, with the views of the present Administration concerning the policy to be pursued toward China. As these instructions contain the substance of most

that it is necessary to say to you before you sail to your post, I inclose a copy of them herewith and invite your special attention to them.

"You will observe that the President adheres to the policy adopted in 1868, when the articles additional to the treaty of 1858 (commonly known as the Burlingame treaty) were concluded. You will, therefore, so shape your private as well as your official conversation as to demonstrate to Prince Kung the sincerity of the United States in its wishes for the maintenance of the authority of the central Government and for the peaceful spread of its influence. You will make clear to the Government to which you are accredited the settled purpose of the President to observe with fidelity all the treaty obligations of the United States, and to respect the prejudices and traditions of the people of China when they do not interfere with rights which have been acquired to the United States by treaty. On the other hand you will not fail to make it distinctly understood that he will claim the full performance, by the Chinese Government, of all the promises and obligations which it has assumed by treaties or conventions with the United States. On this point, and in the maintenance of our existing rights to their full extent, you will be always firm and decisive. While you will put forward these claims where occasion requires, with prudence and moderation, you will be unyielding in demanding the extreme protection of the American citizens, commerce, and property which is conceded by the treaties, and in requiring the full recognition of your own official position to which you are entitled.

"The instructions to Mr. Bancroft set forth so fully the policy of the United States toward China, the ends to be accomplished there, and the peaceful spirit which is to animate your mission, that I content myself with again referring you to them for your guidance in those respects."

Mr. Fish, Sec. of State, to Mr. Low, Dec. 3, 1869. MSS. Inst., China; For. Rel., 1870.

On April 4, 1870, Mr. Fish, Secretary of State, addressed a letter to Mr. Robeson, Secretary of the Navy, in which it was stated that the President had ordered that the naval forces of the United States on the China seas should unite with the North German fleet there stationed in repressing "cases of recognized piracy."

MSS. Dom. Let.

The President, in April, 1870, concurred in the proposition of the German Government that there should be a combined action of the Powers concerned in the Chinese trade against the pirates on the Chinese waters, and instructions were issued by the Navy Department to Admiral Rodgers accordingly.

Mr. Fish, Sec. of State, to Mr. Low, Apr. 20, 1870. MSS. Inst., China.

"Referring to my No. 259, inclosing a copy of Mr. Fish's telegram of the 1st instant, instructing you to propose to the North German Gov-

ernment a suspension of hostilities in Chinese waters, I have to say that no reply or acknowledgment has been received.

"When the massacre of Tien-Tsin took place, Mr. Low was of opinion that the outbreak was a local one and unpremeditated, * * * and although the Chinese populace were still much excited, Mr. Low thought that the danger was over, that the Government was sincere in its intention to prevent a repetition and to punish the offenders, and that there was no probability of similar outbreaks elsewhere.

"In his subsequent dispatches he still adheres to his original opinion that the disturbance was local and unpremeditated, and that the Government at Pekin sincerely desired to prevent a repetition and to preserve peace; but he appears to have decidedly modified his opinion as to the probability that they will be able to do so. His doubts are founded on the injudicious course pursued by the French chargé d'affaires in demanding the summary execution of the Tien-Tsin officials and an ultimatum, and upon the hopes the populace in the large Chinese cities derive from the state of war existing between Germany and France, which they argue will neutralize the force of those two powers. He expresses the fear that the Government at Pekin may find itself too weak to resist the pressure of popular opinion in the masses, acting in harmony with the cherished wishes and purposes of the *literati*, and that it may be forced into war to prevent popular outbreaks.

"It seemed to the President that these views coming from a gentleman so cautious, dispassionate, and prudent as Mr. Low, were entitled to more than the ordinary consideration. He therefore directed, after consultation with the Cabinet, the telegram of the 1st instant to be sent to you, believing that any advantage which one belligerent might gain over the other in eastern waters would be of small consequence to the victor, compared with the preservation of peace in China.

"The President does not intend to depart from the policy pointed out in Mr. Fish's dispatch No. 148, of August 31, 1869. He does not propose to take part, nor does he invite North Germany to take part, in any controversy between France and China growing out of the massacre of Tien-Tsin. He only desires that so far as the impression of the neutralization of German and French influence by the state of hostilities operated to enfeeble the central Government, that impression may be removed; and that should unfortunately a general war be declared by China, or should an outbreak against foreigners take place which the Government cannot prevent nor punish, the several powers may be in position to afford the fullest measure of protection.

"I inclose copies of two telegrams from Mr. Motley, which would seem to indicate that the commanders of the French and Prussian fleets have come to some understanding, but it is not clear that this has been ratified at Berlin and Paris.

"I also inclose a copy of a communication of the 5th instant from Baron Gerolt bearing upon this subject."

Mr. J. C. B. Davis, Acting Sec. of State, to Mr. Bancroft, Nov. 8, 1870. MSS. Inst., Germ.; For. Rel., 1870.

As to protection of American interests in China and Japan, see Senate Ex. Doc. Nos. 52, 58, 41st Cong., 1st sess.

"Anticipating trouble from this cause (the effect of the war between France and Germany in aggravating the difficulties of foreigners in China), I invited France and North Germany to make an authorized suspension of hostilities in the East (where they were temporarily suspended by the commanders), and to act together for the future protection, in China, of the lives and properties of Americans and Europeans."

President Grant, Second Annual Message, 1870.

On December 31, 1872, it was declared by the President that the period had arrived when an audience by diplomatic representatives with the Emperor of China should be demanded, but that this demand should be in concert with the western powers.

Mr. Fish, Sec. of State, to Mr. Low, Dec. 21, 1872. MSS. Inst., China. See same to same, Dec. 30, 1872.

This, however, was afterwards left to the "best judgment" of the minister.

Mr. Fish to Mr. Avery, July 1, 1875, *ibid.* See *infra*, § 85.

"In connection with this subject I call the attention of Congress to a generally conceded fact, that the great proportion of the Chinese immigrants who come to our shores do not come voluntarily to make their homes with us and their labor productive of general prosperity, but come under contracts with head-men who own them almost absolutely. In a worse form does this apply to Chinese women. Hardly a perceptible percentage of them perform any honorable labor, but they are brought for shameful purposes, to the disgrace of the communities where settled, and to the great demoralization of the youth of those localities. If this evil practice can be legislated against, it will be my pleasure, as well as duty, to enforce any regulation to secure so desirable an end."

President Grant, Sixth Annual Message, 1874.

While the United States Government will not permit any discriminations against its citizens in China on account of their maintenance of their religious views, this does not imply the countenancing of them in "the obtrusive presentation of certain views in violation of the laws of a country in which the parties have entered."

Mr. Fish, Sec. of State, to Mr. G. F. Seward, May 2, 1876. MSS. Inst., China.

There will be no diplomatic interposition in China to protect from Chinese prosecution a native Chinese Christian preacher charged with

personal offense when the proceedings against him are exclusively fo[illegible] for uch offense.

Mr. Fish, Sec. of State, to Mr. G. F. Seward, June 12, 1876. MSS. Inst., China. As to course taken by the United States legation in China in respect to mi[illegible]missionaries, see instructions of Mr. Fish, Sec. of State, to Mr. G. F. Sewar[illegible]ard, June 12, July 22, 1876; MSS. Inst., China; and Mr. Seward's dispatch [illegible]h of May 9, 1876. See also *supra*, § 54.

The application of the settled principles of international law to t[illegible] the Chinese in the United States is to be modified by the fact that t[illegible] the Chinese decline to accept these principles, leading an isolated life in [illegible] the communities in which they are settled, always expecting to return [illegible] to China, and never, therefore, becoming domiciled among us, and that t[illegible]ey maintain the same system of isolation towards Americans in Ch[illegible]na, regarding them always as strangers, more or less outside of the protection of the law.

Mr. Fish, Sec. of State, to Mr. G. F. Seward, Aug. 31, 1876. MSS. Inst., China. This subject is discussed at length *infra* in this section.

The position of the United States as the only commercial or western nation that is a commercial power of the Pacific Ocean, and as a country exporting largely from and importing largely into China, and this by the nearest line of approach, makes our relations with China peculiarly close, and it is important for our legation to press upon China, in order to carry out freely these commercial relations, "that imported goods while they retain this quality, and are identified in form and conditio[illegible] of importation, not having been broken up or distributed into the mas[illegible] of domestic property, are to be subjected to no further taxation ant[illegible]cedent to such distribution, and to no discriminating taxation in th[illegible] quality of foreign goods after such distribution." There should also "no discrimination favorable to one foreign nation, directly or cover[illegible] in the adjustment of duties."

Mr. Evarts, Sec. of State, to Messrs. Angell *et al.*, June 7, 1880. MSS. China.

"I have the honor to acknowledge the receipt of your note of th[illegible] of November last, in relation to the recent unfortunate occurre[illegible] Denver, Colo., by which certain Chinese residents of that city [illegible] very serious injuries in their persons and property, were sub[illegible] wanton and undeserved outrage, and one of their number kill[illegible]

"These sad consequences resulted from the conduct and a[illegible] lawless mob, who, for a brief period, during the 31st of Octob[illegible] night following that day, obtained the mastery over the la[illegible] local authorities. The attack of the mob appears to have be[illegible] indiscriminately directed against the peaceable and law-ab[illegible] whole community.

"I embrace this opportunity to state for your own inf[illegible]

t of the Chinese Government, which you worthily represent, that the sident, upon the receipt of the information that in this outbreak of b violence the Chinese residents of Denver had been made a special ect of the hatred and violence of that lawless mob, felt as much in- nation and regret as could possibly be felt by yourself or your Gov- ment, and I need scarcely assure you that, in common with my col- gues in the executive government, I shared fully in this sentiment he President.

You express in your note the desire that this Government shall ex- d protection to the Chinese in Denver, and see that the guilty per- s are arrested and punished; and you add that 'it would seem to just that the owners of the property wantonly destroyed shall in ie way be compensated for their losses.'

It affords me pleasure to assure you that not only in Denver, but in ry other part of the United States, the protection of this Government l always be, as it always has been, freely and fully given to the na- es of China resident in the country, in the same manner and to the ne extent as it is afforded to our own citizens. As to the arrest and nishment of the guilty persons who composed the mob at Denver, I d only remind you that the powers of direct intervention on the part his Government are limited by the Constitution of the United States. der the limitations of that instrument, the Government of the Federal ion cannot interfere in regard to the administration or execution of municipal laws of a State of the Union, except under circumstances ressly provided for in the Constitution. Such instances are confined the case of a State whose power is found inadequate to the enforce- nt of its municipal laws and the maintenance of its sovereign au- rity; and even then the Federal authority can only be brought into ration in the particular State, in response to a formal request from proper political authority of the State. It will thus be perceived t so far as the arrest and punishment of the guilty parties may be cerned it is a matter which, in the present aspect of the case, belongs lusively to the government and authorites of the State of Colorado. this connection it is satisfactory to be able to note with approval conduct of the public authorities of Colorado, and the people of ver, on the unfortunate occurrence in question. It was seen then, t always is in such outbreaks, that the fury of the brutal and lawless compose such mobs is ultimately turned against the weak and de- seless, and it is creditable alike to the appreciative sense of public y of the authorities of Colorado and the humane instincts of the zens of Denver, that their first care in this emergency (involving as id for the moment the lives and property of all alike) was the pro- tion and safety of the Chinese residents, whose presence seemed to e as a special incitement to the passions of the mob. And this ngs me to the suggestion of your note, 'That the owners of the prop-

erty wantonly destroyed shall in some way be compensated for their losses.'

"It seems superfluous to recall to your attention the fact, but too well attested by history, that on occasions, happily infrequent, often without motive in their inception, and always without reason in their working, lawless persons will band together and make up a force in the character of a mob of sufficient power and numerical strength to defy for the moment the denunciations of the law and the power of the local authorities. Such incidents are peculiar to no country. Neither the United States nor China are exempt from such disasters. In the case now under consideration it is seen that the local authorities brought into requisition all the means at their command for the suppression of the mob, and that these means proved so effective that within twenty-four hours regular and lawful authority was re-established, the mob completely subdued, and many of the ringleaders arrested.

"Under circumstances of this nature when the Government has put forth every legitimate effort to suppress a mob that threatens or attacks alike the safety and security of its own citizens and the foreign residents within its borders, I know of no principle of national obligation, and there certainly is none arising from treaty stipulation which renders it incumbent on the Government of the United States to make indemnity to the Chinese residents of Denver, who in common with citizens of the United States, at the time residents in that city, suffered losses from the operations of the mob. Whatever remedies may be afforded to the citizens of Colorado or to the citizens of the United States from other States of the Union resident in Colorado for losses resulting from that occurrence, are equally open to the Chinese residents of Denver who may have suffered from the lawlessness of the mob. This is all that the principles of international law and the usages of national comity demand.

"This view of the subject supersedes any discussion of the extent or true meaning of the treaty obligations on the part of this Government toward Chinese residents, for it proceeds upon the proposition that these residents are to receive the same measure of protection and vindication under judicial and political administration of their rights as our own citizens.

"In communicating to you the views of this Government in the premises, I have pleasure in adding the assurance that it will upon every occasion, so far as it properly can, give its continued attention to every just and proper solicitude of the Chinese Government in behalf of its subjects established here under the hospitality of our treaties."

Mr. Evarts, Sec. of State, to Chen Lan Pin, Dec. 30, 1880. MSS. Notes, China; For. Rel., 1881.

"Referring to your note of the 10th of November last, and my predecessor's reply thereto of the 30th of December following, on the subject

of the riot on the 31st of last October, at Denver, Colo., I have now the honor to acknowledge the receipt by the Department of your notes of the 21st of January and 25th of February, respectively, in relation to the same matter.

"I note with satisfaction the expressions of appreciation of the disposition of this Government toward that of China, and the subjects of China resident in the United States, which you so frankly avow. I must express my regret, however, that the views so clearly expressed by my predecessor in regard to the question of liability of this Government to make pecuniary indemnity to the Chinese sufferers by the occurrences at Denver, failed to commend themselves to your enlightened judgment. Concurring, as I do, in the conclusions thus reached by Mr. Evarts, and conceiving the principle upon which they rest to be in consonance with public law and the universal practice of nations, I must insist that that principle is the one by which the obligations of this Government in regard to the incident in question are to be measured. After recounting the efforts put forth by the local authorities for the suppression of the riots (efforts that happily proved successful with only the loss of one life, although the mob numbered thousands), my predecessor thus states the rule:

"'Under circumstances of this nature, when the Government has put forth every legitimate effort to suppress a mob that threatens or attacks alike the safety and security of its own citizens and the foreign residents within its borders, I know of no principle of national obligation, and there certainly is none arising from treaty stipulation, which renders it incumbent on the Government of the United States to make indemnity to the Chinese residents of Denver, who, in common with citizens of the United States at that time resident in that city, suffered losses from the operations of the mob. Whatever remedies may be afforded to the citizens of Colorado, or to the citizens of the United States from other States of the Union resident in Colorado, for losses resulting from that occurrence, are equally open to the Chinese residents of Denver who may have suffered from the lawlessness of that mob. This is all that the principles of international law and the usages of national comity demand.'

"You observe with reference to these views, 'that it appears to you that treaties, as well as the Constitution, are the supreme law of this land.' 'The Chinese residents,' you add, 'who were subjected to the wanton outrage of the mob came to this country under the right of treaties between China and the General Government of the United States,' and quoting from the verdict of the coroner's jury at the inquest over the body of the unfortunate Sing Lee, you proceed to say that 'this verdict shows clearly that the local authorities had not brought into requisition all the means for the suppression of the mob.' Invoking in support of these views the treaty of June, 1858, between the

United States and China, you partially quote the provisions of the first article, the entire text of which is as follows:

"'There shall be, as there have always been, peace and friendship between the United States of America and the Ta Tsing Empire, and between their people respectively. They shall not insult or oppress each other for any trifling cause, so as to produce an estrangement between them; and if any other nation should act unjustly or oppressively, the United States will exert their good offices, on being informed of the case, to bring about an amicable arrangement of the question, thus showing their friendly feelings.'

"In submitting for your consideration such remarks as these observations in your note seem to demand, I first bring to your notice the provisions of the first paragraphs of Article XI of the same treaty. It says:

"'All citizens of the United States of America in China, peaceably attending to their affairs, being placed on a common footing of amity and good-will with the subjects of China, shall receive and enjoy for themselves and everything appertaining to them the protection of the local authorities of Government, who shall defend them from all insult or injury of any sort. If their dwellings or property be threatened or attacked by mobs, incendiaries, or other violent or lawless persons, the local officers, on requisition of the consul, shall immediately dispatch a military force to disperse the rioters, apprehend the guilty individuals, and punish them with the utmost rigor of the law.'

"You will perceive that neither in this article nor in any other part of the same treaty is there any provision reciprocal with this with regard to subjects of China resident in the United States, and the reason for this must at once be obvious to your superior intelligence. No treaty stipulations are necessary to enable subjects of China to come to this country, take up their residence here, and pursue any lawful business or calling in common with the citizens or subjects of every country in the world who may choose to make their home in this Republic. The subjects of China, in respect to their rights and security of person and property, are placed under the protection of the laws of the United States in manner and measure equal to that extended to native citizens of this country, and that the Chinese residents of Denver at the time of the unfortunate occurrences now in question were in the enjoyment of this common protection of the law is shown by the report of the Chinese consul, Mr. Bee, to you, a copy of which accompanies your note. One or two of the local functionaries may, at first, in the presence of an enraged mob numbering over 5,000, have shown some hesitation and timidity. Under the circumstances, it cannot be a matter of surprise that they were seized with such feelings, but, as is seen by the report in question, the governor of the State, the mayor of the city, and the sheriff, acting in conjunction in the exercise of their respective

wers, succeeded in quelling this formidable riot (which had its incipcy in a drinking-house where Chinese and others were engaged in nbling on Sunday, contrary to the laws of the State) at 2 o'clock in afternoon, within the short space of eight hours, quiet and order ring been completely restored by 10 o'clock of the same night. A re successful resistance to a mob of such character and numbers can- be found in the history of any community or country, and that this uld have been accomplished without the shedding of blood or a resort he use of fire-arms is at once creditable to the authorities and to the ular respect for the laws.

And it is pertinent to add here that from Mr. Bee's report, it also ears that amongst a number of the ringleaders who have been ested, two have been identified as the chief assailants of Sing Lee, l are now held for trial for the murder.

Your observations to the effect that treaties form a part of the reme law of this land equally with the Constitution of the United tes is evidently based on a misconception of the true nature of the stitution. That instrument, together with all laws which are made pursuance thereof, and all treaties made or which shall be made ler the authority of the United States, are the supreme law of the d. Such is the language of the Constitution, but it must be observed t the treaty, no less than the statute law, must be made in conform- with the Constitution, and were a provision in either a treaty or a found to contravene the principles of the Constitution, such pro- ion must give way to the superior force of the Constitution, which is organic law of the Republic, binding alike on the Government and nation. It is under this interpretation of the Constitution that for- ners, no less than citizens, find their best guarantee for that security l protection in their persons and property which it is the aim and ire of the Government of the United States to extend to all alike.

Having thus replied to the several observations and suggestions mitted in your note, I venture to express the hope entertained by Government that the determination thus reached after mature con- eration, will be accepted by that of China as the final conclusion of subject."

Mr. Blaine, Sec. of State, to Chen Lan Pin, Mar. 25, 1881. MSS. Notes, China; For. Rel., 1881.

As to injuries from mob violence, see *infra*, § 226.

he United States would view in an unfriendly light any action by ina giving exclusive telegraphic privileges to any other foreign ion.

Mr. Blaine, Sec. of State, to Mr. Holcombe, Dec. 10, 1881. MSS. Inst., China.

The Government of the United States, on application from the min- er of China, will call upon the governors of States in which there

have been alleged outrages on Chinese to investigate such allegations.

Mr. Frelinghuysen, Sec. of State, to the Governor of California, June 20, 1882. MSS. Dom. Let.

As to right by Chinese laborers of transit over the United States, see letter of Mr. Frelinghuysen, Sec. of State, to Mr. Folger, Jan. 9, 1883. MSS. Dom. Let.

"The attitude of the United States towards China, as towards the other countries of Eastern Asia, has been consistently a friendly one. We have not attempted to impose our views upon them by force, but have preferred to trust to frank and friendly argument, limiting our demand to what we might with justice ask, and, supporting them with frank argument and appeals to the sense of justice of the Imperial Government; we have been met in a like amicable spirit, and it is believed that the result has been for the advantages of both the nations. As a result of this policy, citizens of the United States have established themselves in the open ports of China, have there engaged in legitimate and useful occupations, benefiting China no less than themselves, and the United States have there invested their capital and the fruits of their labor, and have done all this under the express protection of wise treaty provisions binding upon the Imperial Government and all Chinese officials. The United States cannot assent at this late day to a return to the ancient exclusive system, which will involve destruction of the property of their citizens and abrogation of their vested rights."

Mr. Frelinghuysen, Sec. of State, to Mr. Young, Feb. 26, 1883. MSS. Inst., China.

The appointment of missionaries by our Government to official representative positions in China is "a question to be treated with great care, not less for their own protection and that of their colleagues, than for the interests of the public service."

Mr. Frelinghuysen, Sec. of State, to Mr. Young, Mar. 8, 1883. MSS. Inst., China.

The Department of State will take all steps necessary to comply with the third article of the Chinese immigration treaty in so far as it constrains this Government to "exert all its power to devise measures for the protection of any Chinese who suffer ill-treatment, and secure to them the full enjoyment of their" rights.

Mr. Frelinghuysen, Sec. of State, to the Governor of Georgia, Mar. 12, 1883. MSS. Dom. Let.

"Questions have arisen touching the rights of American and other foreign manufacturers in China under the provisions of treaties which permit aliens to exercise their industries in that country. On this specific point our own treaty is silent, but under the operation of the most-favored-nation clause, we have like privileges with those of other pow-

3. While it is the duty of the Government to see that our citizens ve the full enjoyment of every benefit secured by treaty, I doubt the pediency of leading in a movement to constrain China to admit an terpretation which we have only an indirect treaty right to exact. ie transference to China of American capital for the employment ere of Chinese labor would in effect inaugurate a competition for the ntrol of markets now supplied by our home industries.

"There is good reason to believe that the law restricting the immiation of Chinese has been violated, intentionally or otherwise, by the icials of China upon whom is devolved the duty of certifying that the migrants belong to the excepted classes.

"Measures have been taken to ascertain the facts incident to this pposed infraction, and it is believed that the Government of China ll co-operate with the United States in securing the faithful observce of the law."

President Arthur, Third Annual Message, 1883.

Neither France nor China has the right arbitrarily to close the inese treaty ports, though this may be done by China for necessary fense.

Mr. Frelinghuysen, Sec. of State, to Mr. Young, Jan. 22, 1884. MSS. Inst., China.

A United States consul in China is required, within the range of his ties, to obey the official order of the minister of the United States in ina. If this order is reversed by the Department of State, the reersal is communicated through the minister, until which time the order nds.

Mr. Frelinghuysen, Sec. of State, to Mr. Young, Feb. 6, 1884. MSS. Inst., China.

"The purpose of the neutral powers is primarily the protection of eir own interests at the several treaty ports. The foreign settlements the open ports are singularly abnormal growths. Under no one g, they are under the protection of all. In whatever concerns their de, their shipping, and their vested interests, they are distinctively reign to the administrative system of China.

"Hence, as you have lately learned, when the possible closing of nton by the Chinese as a measure of protection against threatened ench aggression was seriously contemplated, the other treaty powers t justified in expecting of France a formal declaration of purpose not attack Canton. The view of the United States, as expressed to Great itain, was that neither China nor France had the right to close the aty ports, but that if they should be attacked by France, China could t be denied a right of defense, to be availed of in any manner legitiate to a state of war."

Mr. Frelinghuysen, Sec. of State, to Mr. Young, Mar. 21, 1884. MSS. Inst., China.

As to treaty with China, see *infra*, § 144.

"The obligation of a neutral Government to prevent its citizens from joining in hostile movements against a foreign state is limited by the extent to which such citizens are under its jurisdiction and by the municipal laws applicable to their actions. Hence, a citizen outside of such jurisdiction may not be controlled in his free acts; but what he does is at his own risk and peril. If he offers his services to a combatant, that is a matter of private contract, which it may be equally improper for his own Government to forbid or protect; and such service in legitimate war is not contrary to international law.

"In China, however, foreign powers have an extraterritorial jurisdiction conferred by treaty. This jurisdiction is in nowise arbitrary, but is limited by laws, and is not preventive but punitory. If a citizen of the United States in China commit an offense against the peace of China, it is triable in the consular courts. Section 4102 of the Revised Statutes provides that 'insurrection or rebellion against the Government of either of those countries [*i. e.*, the countries named in section 4083, whereof China is one], with intent to subvert the same, and murder, shall be capital offenses punishable with death,' &c., the consular court and the minister to concur in awarding the penalty. But the simple act of entering into a private contract to serve either combatant in open warfare would not appear to be triable under this section; and, even if it were, this Government would have no rightful power to forbid such service."

Mr. Bayard, Sec. of State, to Mr. Young, Mar. 11, 1885. MSS. Inst., China.
As to local passports in China, see Mr. Frelinghuysen, Sec. of State, to Mr. Young, Aug. 8, 1884, and Jan. 19, 1885. MSS. Inst., China, cited *infra*, § 193 *ff.*

"It is made the constitutional duty of the President to recommend to the consideration of the Congress, from time to time, such measures as he shall judge necessary and expedient. In no matters can the necessity of this be more evident than when the good faith of the United States under the solemn obligation of treaties with foreign powers is concerned.

"The question of the treatment of the subjects of China sojourning within the jurisdiction of the United States presents such a matter for the urgent and earnest consideration of the Executive and the Congress.

"In my first annual message, upon the assembling of the present Congress, I adverted to this question in the following words:

"'The harmony of our relations with China is fully sustained.

"'In the application of the acts lately passed to execute the treaty of 1880, restrictive of the immigration of Chinese laborers into the United States, individual cases of hardship have occurred beyond the power of the Executive to remedy, and calling for judicial determination.

"'The condition of the Chinese question in the Western States and

Territories is, despite this restrictive legislation, far from being satisfactory. The recent outbreak in Wyoming Territory, where numbers of unoffending Chinamen, indisputably within the protection of the treaties and the law, were murdered by a mob, and the still more recent threatened outbreak of the same character in Washington Territory, are fresh in the minds of all, and there is apprehension lest the bitterness of feeling against the Mongolian race on the Pacific slope may find vent in similar lawless demonstrations.

"'All the power of this Government should be exerted to maintain the amplest good faith toward China in the treatment of these men, and the inflexible sternness of the law in bringing the wrong-doers to justice should be insisted upon.

"'Every effort has been made by this Government to prevent these violent outbreaks, and to aid the representatives of China in their investigation of these outrages; and it is but just to say that they are traceable to the lawlessness of men not citizens of the United States engaged in competition with Chinese laborers.

"'Race prejudice is the chief factor in originating these disturbances, and it exists in a large part of our domain, jeopardizing our domestic peace and the good relationship we strive to maintain with China.

"'The admitted right of a Government to prevent the influx of elements hostile to its internal peace and security may not be questioned, even where there is no treaty stipulation on the subject. That the exclusion of Chinese labor is demanded in other countries where like conditions prevail is strongly evident in the Dominion of Canada, where Chinese immigration is now regulated by laws more exclusive than our own. If existing laws are inadequate to compass the end in view, I shall be prepared to give earnest consideration to any further remedial measures within the treaty limits which the wisdom of Congress may devise.'

"At the time I wrote this the shocking occurrences at Rock Springs, in Wyoming Territory, were fresh in the minds of all, and had been recently presented anew to the attention of this Government by the Chinese minister in a note, which, while not unnaturally exhibiting some misconception of our Federal system of administration in the Territories while they as yet are not in the exercise of the full measure of that sovereign self-government pertaining to the States of the Union, presents in truthful terms the main features of the cruel outrages there perpetrated upon inoffensive subjects of China. In the investigation of the Rock Springs outbreak and the ascertainment of the facts on which the Chinese minister's statements rest, the Chinese representatives were aided by the agents of the United States, and the reports submitted, having been thus framed and recounting facts within the knowledge of witnesses on both sides, possess an impartial truthfulness which could not fail to give them great impressiveness.

"The facts, which so far are not controverted or affected by any exculpatory or mitigating testimony, show the murder of a number of Chinese subjects in September last, at Rock Springs, the wounding of many others, and the spoliation of the property of all when the unhappy survivors had been driven from their habitations. There is no allegation that the victims, by any lawless or disorderly act on their part, contributed to bring about a collision. On the contrary, it appears that the law-abiding disposition of these people, who were sojourners in our midst under the sanction of hospitality and express treaty obligations, was made the pretext for the attack upon them. This outrage upon law and treaty engagements was committed by a lawless mob. None of the aggressors, happily for the national good fame, appear by the reports to have been citizens of the United States. They were aliens, engaged in that remote district as mining laborers, who became excited against the Chinese laborers, as it would seem, because of their refusal to join them in a strike to secure higher wages. The oppression of Chinese subjects by their rivals in the competition for labor does not differ in violence and illegality from that applied to other classes of native or alien labor. All are equally under the protection of law, and equally entitled to enjoy the benefits of assured public order.

"Were there no treaty in existence referring to the rights of Chinese subjects, did they come hither as all other strangers who voluntarily resort to this land of freedom, of self-government, and of laws, here peaceably to win their bread and to live their lives, there can be no question that they would be entitled still to the same measure of protection from violence, and the same free forum for the redress of their grievances as any other aliens.

"So far as the treaties between the United States and China stipulate for the treatment of the Chinese subjects actually in the United States as the citizens or subjects of 'the most favored nation' are treated, they create no new status for them; they simply recognize and confirm a general and existing rule, applicable to all aliens alike, for none are favored above others by domestic law, and none by foreign treaties unless it be the Chinese themselves in some respects. For, by the third article of the treaty of November 17, 1880, between the United States and China, it is provided that:

"'ARTICLE III.

"'If Chinese laborers, or Chinese of any other class, now either permanently or temporarily residing in the territory of the United States, meet with ill-treatment at the hands of any other persons, the Government of the United States will exert all its power to devise measures for their protection, and to secure to them the same rights, privileges, immunities, and exemptions as may be enjoyed by the citizens or subjects of the most favored nation, and to which they are entitled by treaty.'

"This article may be held to constitute a special privilege for Chinese subjects in the United States as compared with other aliens, not that it creates any peculiar rights which others do not share, but because in case of ill-treatment of the Chinese in the United States this Government is bound to 'exert all its power to devise measures for their protection' by securing to them the rights to which, equally with any and *all* foreigners, they are entitled.

"Whether it is now incumbent upon the United States to amend their general laws or devise new measures in this regard, I do not consider in the present communication, but confine myself to the particular point raised by the outrage and massacre at Rock Springs.

"'The note of the Chinese minister, and the documents which accompany it, give, as I believe, an unexaggerated statement of the lamentable incident, and present impressively the regrettable circumstance that the proceedings, in the name of justice, for the ascertainment of the crime and fixing the responsibility therefor were a ghastly mockery of justice. So long as the Chinese minister, under his instructions, makes this the basis of an appeal to the principles and convictions of mankind, no exception can be taken; but when he goes further, and, taking as his precedent the action of the Chinese Government in past instances where the lives of American citizens and their property in China have been endangered, argues a reciprocal obligation on the part of the United States to indemnify the Chinese subjects who suffered at Rock Springs, it becomes necessary to meet his argument and to deny, most emphatically, the conclusions he seeks to draw as to the existence of such a liability, and the right of the Chinese Government to insist upon it.

"I draw the attention of the Congress to the latter part of the note of the Secretary of State of February 18, 1886, in reply to the Chinese minister's representations, and to invite especial consideration of the cogent reasons by which he reaches the conclusion that, whilst the United States Government is under no obligation, whether by the express terms of its treaties with China or the principles of international law, to indemnify these Chinese subjects for losses caused by such means and under the admitted circumstances, yet that in view of the palpable and discreditable failure of the authorities of Wyoming Territory to bring to justice the guilty parties or to assure to the sufferers an impartial forum in which to seek and obtain compensation for the losses which those subjects have incurred by a lack of police protection, and considering further the entire absence of provocation or contribution on the part of the victims, the Executive may be induced to bring the matter to the benevolent consideration of the Congress, in order that that body, in its high discretion, may direct the bounty of the Government in aid of innocent and peaceful strangers whose maltreatment has brought discredit upon the country, with the distinct understanding that such action is in nowise to be held as a precedent, is wholly gratuitous, and

is resorted to in the spirit of pure generosity toward those who are otherwise helpless."

President Cleveland, Special Message of Mar. 2, 1886.

"I have the honor to acknowledge the receipt of the very interesting and important communication which you addressed to me on the 30th of November last, touching the treatment of Chinese subjects in the United States.

"The subject to which your note relates has already received the most earnest and careful consideration of the President, in whose annual message to the houses of Congress in December last you cannot have failed to note very impressive recommendations fully recognizing the responsibility of this Government to observe, in letter and in spirit, the duties of benignity and friendship to which your note refers, as set forth in the treaties of 1868 and 1880, between the United States and China. And, although my formal reply to your note has been somewhat delayed, owing to causes beyond my control and in part painfully personal to myself, you will doubtless have observed, or at least conjectured, the influence of your communication in the following reference of the President to the condition and treatment of Chinese subjects resorting to this country:

"'In the application of the acts lately passed to execute the treaty of 1880, restrictive of the immigration of Chinese laborers into the United States, individual cases of hardship have occurred beyond the power of the Executive to remedy, and calling for judicial determination.

"'The condition of the Chinese question in the Western States and Territories is, despite this restrictive legislation, far from being satisfactory. The recent outbreak in Wyoming Territory, where numbers of unoffending Chinamen, indisputably within the protection of the treaties and the law, were murdered by a mob, and the still more recent threatened outbreak of the same character in Washington Territory, are fresh in the minds of all, and there is apprehension lest the bitterness of feeling against the Mongolian race on the Pacific slope may find vent in similar lawless demonstrations. All the power of this Government should be exerted to maintain the amplest good faith toward China in the treatment of these men; and the inflexible sternness of the law in bringing the wrong-doer to justice should be insisted upon.

"'Every effort has been made by this Government to prevent these violent outbreaks and to aid the representatives of China in their investigation of these outrages; and it is but just to say that they are traceable to the lawlessness of men not citizens of the United States engaged in competition with Chinese laborers.

"'Race prejudice is the chief factor in originating these disturbances, and it exists in a large part of our domain, jeopardizing our domestic peace and the good relationship we strive to maintain with China.'

"The President's unambiguous and frank declarations stated have

anticipated, for the most part, the tenor of my delayed reply to your note.

"You and your Government are so well aware of the sincerity with which this Government professes its desire and intention to carry out in the fullest good faith all obligations springing from international comity and inspired by the especial amity which finds expression in the several treaties between the United States and China, that it may, perhaps, be superfluous for me to reiterate assurances of our sorrow and abhorrence caused by the lawless and cruel outrages of which so many of your countrymen were unhappily made the victims in September last at Rock Springs, in the Territory of Wyoming, and which have been fully and truthfully recited in your note and in the accompanying documents.

"Let me assure you, however, that I but speak the voice of honest and true American citizens throughout this country, and of the Government founded on their will, when I denounce with feeling and indignation the bloody outrages and shocking wrongs which were there inflicted upon a body of your countrymen. There is nothing to extenuate such offenses against humanity and law, and not the least of the outrages upon the good name of the law was the wretched travesty of the forms of justice by a certain local officer, acting as coroner, and pretending to give a legal account of the manner in which the victims met their death.

"It appears from your statements and the reports transmitted in support thereof—the accuracy of which I do not question—that twenty-eight of your countrymen were killed outright at Rock Springs, fifteen were wounded, and many more driven from their homes, while the property of Chinese subjects to the value of upwards of $147,000 was either destroyed or pillaged by the rioters.

"My sense of humanity is no less aroused than yours to strong feelings of indignation and commiseration; but, besides this common sentiment, I feel with equal poignancy deep mortification that such a blot should have been cast upon the record of our Government of laws.

"To aid in weighing the responsibility for these occurrences and to attain a clearer comprehension of the wrong, its origin, its progress, and its proper remedies, I will ask your attention to a few of the main admitted facts, as stated by yourself and as disclosed by the investigation, in which, as you justly say, your official agents were importantly assisted by the presence of officers of the United States Army specially assigned for that purpose.

"The region in which this outbreak occurred is not within the borders of any State of the United States, but is within the limits of Wyoming Territory. You make the point that this Territory is directly under the control of the Federal Government, and that the acts of Territorial officers are in that degree those of the United States in the national capacity, not those of a distinct sovereignty. In this you approximately state

a broad proposition, but do not accurately give it specific applicatio
By its enabling and organic law the Territory of Wyoming enjoys loca
self-government, with a full equipment of officials in every branch know
to our republican forms, who are invested with full authority to mai
ain law and order and administer justice to all inhabitants. This Te
itorial government contains the usual framework of the other republi
which combine to form this Union. It comprises an executive, a leg
ative, and a judicial branch. In the centers of population this gover
nent is as competent to discharge its administrative obligations as
he government of any State, and is responsible in the same way. Re
ent occurrences at Seattle, in the Territory of Washington, show th
Blood has been shed there lately under the authority of Territorial off
ials in successful defense and assertion of the right of certain of your
ountrymen to peaceable and law-observant residence.

"The scene of the lamentable occurrences at Rock Springs was, how
ver, remote from any center of population, and was marked by all the
ustomary features of a newly and scantily settled locality. It con
isted of a scattered assemblage of dwellings near a railway station an
n the vicinity of some coal mines. The population was made up of
nen of all races, migratory in their habits; some engaged as laborers
n mining, while others were employed in furnishing their supplies. O
ormal recognized authority there were few representatives, and little
r no attempt at organized police. It was, in short, a rude commence
nent of a community on the outposts of civilization, and, like all such
eginnings, largely dependent for stability and order on the congruity
f the elements of which it was composed.

"To this remote and unprotected region your countrymen voluntarily
esorted in large numbers. The attack upon them, as your note truly
tates, was made suddenly by a lawless band of about one hundred and
ifty armed men, who had given no previous intimation of their crimina
ntent. These men were discontented mining laborers, who had pre
iously sought to induce the Chinese to join with them in a concerted
trike for higher wages, and their overtures being rejected, they becam
ngered on that account. This, I believe, is the only motive for th
ssault discernible and alleged in the reported evidence.

"On neither side, among assailants or assailed, was there any repr
entative of the Government of China or of the United States or of th
Territory of Wyoming. There was, therefore, as there could be, no of
ial insult or wrong. Whatever occurred was between private individ
ls wholly devoid of official character. It was, moreover, absolutely
ithout national character. The domestic element of an ordinary civil
isturbance was wanting. The assailants, equally with the assailed,
ere strangers in our land. In strict truth, the hospitality of a friendly
ountry, no less than the rights of peaceful sojourners therein, may be
aid to have been outraged by a body of aliens, who, being permitted
y the generosity of our laws to enter our borders and roam unchecked

and at will throughout its jurisdiction, freely and profitably selecting their places of abode and finding occupation therein, have abused the privileges thus accorded to them and committed gross breaches of the public peace, suddenly and doubtless with the knowledge that nowhere within summons could any police organization be found in sufficient force to stay their criminal hands.

"As you are aware, in the States of the Union, and also in the organized Territories, and in the District of Columbia, where the Government of the nation has its Federal seat, the conservation of the public peace is committed to the local authorities, and crimes of violence involving the lives and safety of the property of individuals are held to be in violation of the peace, and in derogation of the local laws and jurisdiction This violation constitutes the criminality which the police of the community seeks to prevent by all rational precautions, and which the law is intended to punish.

"Violent assaults and homicides in all newly-settled countries are very frequent and in proportion as the social elements are incongruous and the organization of the police and judiciary is inchoate and imperfect.

"The Government of the United States, opening its vast domain so freely to actual settlers, has extended the scope and power of the Constitution and laws over the Territories, by confiding to their local legislatures and government the duty and power of maintaining order, preserving the public peace, and punishing infractions thereof. In this respect the local authority and responsibility is in practice as self-contained in a Territory as in a State.

"Moreover, this local authority and responsibility is applied to and affects all inhabitants alike. Before the law, alien and native are equal. Your note, however, intimated rather than argues, the existence of special and peculiar responsibility in respect of the Chinese in our midst. By argument and analogy you seek to show that a singular and exceptional obligation rests upon the United States toward Chinamen, correspondent and reciprocal to the contractual obligations of China in respect of citizens of the United States resorting thither.

"An examination of the treaty stipulations becomes, therefore, most important towards an understanding of this question as stated by you. I am, of course, not unaware that your argument is essentially *ad hominem;* that it appeals to the sense of justice and fair play innate in the human breast; that it alleges that the golden rule 'to do to others as they would have others do to them' is recited approvingly in Article XXIX of the treaty of 1858 between the two nations; and that it advances the assumption that 'if the view' heretofore taken in an analogous case, 'as to the obligations of the United States to make indemnity for injuries to private individuals from mob violence, should be insisted upon and adhered to by' the United States, '*China should, in due reciprocity and international comity, accept and practice the same*

principle.' But, before this *ad hominem* argument can be duly weighed, we must know where the conventional argument actually places us, and the measure of protection and redress they actually and necessarily contemplate in the respective countries.

"The conventional stipulations between the United States and China, to which you have referred, are, as you state, and as appears from their face, in nowise reciprocal. Under the respective system and nature of the two Governments they would not have been made reciprocal, nor were they intended to be so. The frankness which animates your note will, I think, lead you to agree with me, after considering the very different organizations and policies of the Governments of our respective countries which find frequent recognition in the terms of the sundry treaties between them, that the privileges and immunities of Chinese subjects now within the jurisdiction of the United States are vastly greater than ever were or are extended to American citizens who, under the restrictions of the treaties, are allowed to reside and transact business in China.

"The several treaties of 1844, 1858, 1868, and 1880 are acts *in pari materia*, and no subsequent one of them abrogates those which are prior in date. There have been successive modifications, extensions, or substitutions as to special subjects, but always in express revival and renewal of pre-existing treaties; and, unless abrogated in express terms or repealed impliedly by the adoption of new and inconsistent features, they all remain in force. Upon those premises, and passing all the personal and residential stipulations in review, we find restrictions expressly recognized throughout all the treaties, which prove the inability to provide reciprocity, by reason of the totally variant basis on which the administrative functions and powers of the two countries are conducted.

"Until 1868 no right of immigration of Chinese subjects to the United States was ever formally extended. None was, perhaps, needed, for under our free popular Government, and in the absence of any restrictive legislation, our territory was and is equally open to all aliens. It was altogether different in China. That country was closed to alien residence as by a wall. A specific right had to be conventionally created before this exclusion could be modified. To certain classes of citizens of the United States the treaty of 1844 granted carefully restricted rights to visit and sojourn in China, but in every one of the articles which treats of transient or permanent right of residence appears the qualification that it is for purposes of trade.

"Article I applies to our citizens 'resorting to China *for the purposes of commerce.*'

"Article III permits Americans to frequent certain specified ports, 'and to reside with their families *and trade there.*'

"Article IV relates to 'citizens of the United States *doing business* at the said' ports.

"Article V refers to 'citizens of the United States *lawfully* engaged in *commerce*.' The important Article XIX, in regard to protection, speaks of 'citizens of the United States in China *peaceably attending to their affairs*,' and by 'their affairs' we may regard the 'lawful' commerce elsewhere spoken of in the treaty as having been uppermost in the minds of the negotiators. Not merely was the purpose of their sojourn restricted, but citizens of the United States could not, under Article XVII, lawfully transgress certain residential limits. Even within those limits they were not free to select the sites for their 'houses and places of business, and also hospitals, churches, and cemeteries.' The 'merchants' of the United States were not to unreasonably insist on particular spots for those objects. Their residence was expressly conditioned on its being acceptable to the native inhabitants. The treaty says, and I am sure you will recognize the force of this provision:

"'The local authorities of the two Governments shall select in concert the sites for the foregoing object, *having due regard to the feelings of the people in the location thereof*.'

"And of that found at the close of the same Article XVII:

"'And in order to *the preservation of the public peace*, the local officers of the Government at each of the five ports shall, in concert with the Consuls, define the limits *beyond which it shall not be lawful for citizens of the United States to go*.'

"The impracticability of maintaining efficient police protection in many portions of every widely-extended domain was recognized by the Chinese Government when they expressly guarded against liability in the closing paragraph of Article XXIV of the treaty of 1844, as follows:

"'But if, by reason of the extent of territory and numerous population of China, it should in any case happen that the robbers cannot be apprehended or the property only in part recovered, then the law will take its course in regard to the local authorities, but the Chinese Government will not make indemnity for the goods lost.'

"Article XII of the treaty of 1858 is a substantial reaffirmation of these conditions. And it is to be noted that this treaty of 1858, while re-enacting many of the provisions of that of 1844, and passing over others, in no place intimates any enlargement of the residential class of unofficial American citizens to include others than merchants and their families within the narrow limits aforesaid. Ten years later we find the Burlingame treaty opening with the significant declaration that the object of preceding treaties has been to give aliens certain restricted privileges of resort and residence in particular localities 'for purposes of trade.' Article V appears to extend the purposes of residence and resort by including 'curiosity' as a motive; but even this extension is incidental to the enunciation of a principle, so that laws may be passed, not to guarantee 'free migration and emigration' without limit, but to prohibit involuntary emigration—in other words, to suppress the labor and coolie traffic.

"Article VII permits Americans to establish schools in China, and by implication includes American teachers in the classes admitted to restricted residence. In this, as in the other treaties, there is nothing to offset the idea of continued restriction, for Article VI, which gives to citizens of the United States visiting or residing in China 'the same privileges, immunities, or exemptions in respect to travel or residence as may there be enjoyed by the citizens or subjects of the most favored nation,' neither creates nor extends any right of alien sojourn, but rather confirms the announced determination of China to reserve all such rights not expressly granted.

"To sum up, as the treaties stand, American citizens not of diplomatic or consular office may resort to China for trade, for curiosity, or as teachers, and then only to certain carefully limited localities, 'having due regard to the feelings of the people in the location thereof.' If the citizens or subjects of any other power should be granted other or greater privileges, then the citizens of the United States will have equal treatment.

"On the other hand, Chinese subjects were at all times free between 1844 and 1868 to come to the United States and travel or sojourn therein, pursuing whatever lawful occupation they might see fit to engage in, without the need of treaty guarantee. The sixth article of the Burlingame treaty created no privilege in their behalf; it simply recorded an existing fact; for the Chinese were then as free to visit and sojourn in the United States as any other aliens were, and no law of regulation or inhibition was upon our statute-books.

"There was, therefore, in all these years no reciprocity of treatment of the citizens or subjects of the one country within the jurisdiction of the other. There could not be, for the Chinese Government so restricted and hedged about its conceded and carefully limited privileges as to make reciprocity impossible on the part of the United States, unless taking the form of retaliation, which our system of laws makes impracticable.

"The treaty of 1880 is absolutely unilateral. It conveys no hint of reciprocity. Its second article gives to Chinese teachers, students, merchants, and those actuated by motives of curiosity, and also to the Chinese laborers *then* (1880) in the United States, the right to 'go and come of their own free will and accord,' and, in addition to this, the same treatment as the citizens or subjects of the most favored nation. I refrain from asking you to point out to me any responsive position in any of our treaties with China which guarantees to American teachers, students, merchants, curiosity seekers, and laborers the right to 'go and come of their own free will and accord' throughout the length and breadth of China, 'without regard to the feelings of the people' in the localities whither they may resort. I likewise refrain from invoking the *argumentum ad hominem*, as you have done, and from inquiring whether,

in thus restricting the resort and residence of aliens, China has 'done as she would be done by.' I am content to assume that these restrictions are of the nature of the case, and that China has sought to confine her duty in respect of aliens within such limits as might be convenient and practicable for its exercise. but always granting no more privilege than she chooses to grant, and conceding none whatever as of right, but only as matter of convention. And (although the point is not directly allied to the object-matter) you will permit me to remark that I find a pertinent illustration of the subjection of all privileges of alien sojourn in China to the mere volition of its Government, rather than to principles of international usage or comity, in the very narrow rights of visit and sojourn accorded by treaties even to the minister of the United States in the Chinese capital.

"Passing from the question of reciprocity, whether in its sentimental or contractual aspects, to the question of the actual guarantee stipulated by the United States to Chinese of all classes, including laborers within their jurisdiction, and of the responsibilities of this Government in the matter, we find that in the treaty of 1868, by its sixth article, the United States, for the first time, established as a treaty right the theretofore consuetudinary privilege of emigration of Chinese to this country. That article says:

"'Chinese subjects, visiting or residing in the United States, shall enjoy the same privileges, immunities, and exemptions in respect to travel or residence as may there be enjoyed by the citizens or subjects of the most favored nation.'

"This is renewed, with definition and limitation of the particular classes of Chinese to which it is applicable, in the second article of the treaty of 1880.

"What is the substantial and full intent and meaning of these provisions as laid down in 1868, and again with special definition in 1880?

"What 'most favored nation' is to be taken as a test and for the purpose of comparing the rights of its citizens or subjects in the United States with those of China?

"To constitute a special favor between nations it must exist in virtue of treaty or law, and be extended in terms to a particular nation as a nation. Applying this test, the citizens or subjects of no nation (unless it be those of China) have any special favor in the way of personal treatment shown them in the United States. All are treated alike, the subjects of the most powerful nations equally with others. An Englishman, a Frenchman, a German, a Russian, is neither more nor less favored than one of any other nationality.

"Tried by this test, will it be denied that the public and local laws throughout the United States make no distinction or discrimination unfavorable to any man by reason of his Chinese nationality, except only those Federal laws regulating, limiting, and suspending Chinese

immigration which have been enacted in conformity with the express provisions of the treaty of 1880?

"What are the duties of the Government of the United States under that treaty toward Chinese subjects within their jurisdiction?

"The Chinese subjects now in the United States are certainly accorded all the rights, privileges, immunities, and exemptions which pertain to the citizens and subjects of the most favored nation, as is provided in the second article of the treaty. They are suffered to travel at will all over the United States, to engage in any lawful occupation, and to reside in any quarter which they may select, and there is no avenue to public justice or protection for their lives, their commercial contracts, or their property in any of its forms which is not equally open to them as to the citizens of our own country.

"The same laws are administered by the same tribunals to Chinese subjects as to American citizens, save in one respect, wherein the Chinese alien is the more favored, since he has the right of option in selecting either a State or a Federal tribunal for the trial of his rights, which, in many cases is denied for residential causes to our own citizens and he may even at will remove his cause from a State to a Federal court.

"Thus, I find in the public press the announcement that Wing Hing on behalf of himself and others, Chinese subjects, has lately brought suit in the United States circuit court to recover $132,000 from the city of Eureka, Humboldt County, California, for loss of property by the action of a mob in February of last year. A citizen of that State would have been compelled to resort to a State tribunal, without appeal beyond the jurisdiction of the State, whereas the Chinese plaintiff in question can carry his case on appeal to the Supreme Court at Washington, thus divesting his rights from all adverse chance of local prejudice.

"I think you will thus recognize, in the same frank spirit as animates your note, that none of the protection intended by the law for our own citizens is withheld from your countrymen, but that, on the contrary, they possess noteworthy advantages in the choice of forum or the removal of their cause, of which many of our citizens are deprived.

"The provision of an organized and in some cases privileged forum excludes the idea of direct recourse by the alien to other means of obtaining justice or redress. Your note argues that direct recourse to administrative or executive settlement is open to citizens of the United States in China, and instances are cited to show this. Surely, this rather proves that to the alien in China no such judicial forum is secured as to aliens in the United States.

"The extraterritorial tribunals established for their own citizens or subjects by all the powers in treaty relations with China are, in principle and from the reason of the thing, incompetent to adjudicate questions touching the liability of China to aliens. In default of Chinese tribunals admittedly competent to take cognizance of the causes of for-

eigners, what alternative remains besides denial of justice or resort to diplomatic settlement?

"The system of Government which prevails in the United States, and which their public written Constitution has made well known to the Government of China at the time of our entering into treaties with that country, creates several departments, distinct in function, yet all tending to secure justice and to maintain law and order. These three distributive divisions of the sovereign powers of the American people are entirely independent of each other, and the fundamental principle of their several action is the non-interference of their respective functions. Thus, the duty of the Executive is to carry into force the laws enacted by the legislature, and his only warrant of authority to act in any case must be found in the Constitution, or in the laws passed in pursuance thereof by the co-ordinate legislative branch.

"To the judicial branch is committed the administration of remedies for all wrongs, and its courts are open, with every aid they can devise, to secure publicity and impartiality in the administration of justice to every human being found within their jurisdiction. Providing thus a remedy for all individuals, whether many or few, rich or poor, and of whatever age, sex, race, or nationality, the question of liability for reparation or indemnity for losses to individuals, occurring in any way, must be settled by the judgments of the judicial branch, unless the act complained of has been committed under official authority in pursuance of governmental orders to that end.

"The Government of the United States recognizes in the fullest sense the honorable obligation of its treaty stipulations, the duties of international amity, and the potentiality of justice and equity, not trammeled by technical rulings nor limited by statute. But among such obligations are not the reparation of injuries or the satisfaction by indemnity of wrongs inflicted by individuals upon other individuals in violation of the law of the land.

"Such remedies must be pursued in the proper quarter and through the avenues of justice marked out for the reparation of such wrongs.

"The doctrine of the non-liability of the United States for the acts of individuals committed in violation of its laws is clear as to acts of its own citizens, and *a fortiori* in respect to aliens who abuse the privilege accorded them of residence in our midst by breaking the public peace and infringing upon the rights of others, and it has been correctly and authoritatively laid down by my predecessors in office, to whose declarations in that behalf your note refers. To that doctrine the course of this Government furnishes no exception. And in this connection I venture to say that you labor under a misapprehension in citing as an exception the action of the United States, in 1850, in respect of the violence committed upon the Spanish consulate at New Orleans by a mob of irresponsible persons unknown to the Govern-

ment, and with which no officer or agent of the United States was allied.

"Nothing can be clearer than the enunciation of the doctrine of Government non-liability on that occasion. While denouncing such outrages as disgraceful, and in criminal violation of law and order, it was emphatically denied that the acts in question created any obligation on the part of the United States, arising out of the good faith of nations toward each other, for the losses thus occasioned by and to individuals. Neither is there a parity between the Spanish incident of 1850 and the recent riot and massacre of the Chinese at Rock Springs. The essential feature of the first is wholly wanting in the second. The emblem of Spanish nationality had suffered an affront in a city of the United States. The special immunity attaching to the Spanish consular representative had been impaired and he subjected to personal indignity. The incident occurred at a time when the Spanish Government had just shown its regard for and good-will toward the United States in pardoning certain American citizens who had participated in a hostile invasion of Cuba, and had incurred the condemnation of the authorities of that country. Recognizing the merciful action of the Queen of Spain in this regard, and as a responsive act of generosity and friendship tending toward good relationship, the President, while expressly denying the principle of national liability, recommended to Congress the appropriation of certain moneys to be paid to private individuals on account of the damages caused by riots at New Orleans and Key West, and to the Spanish consul at New Orleans a special indemnity as an official of Spain.

"In one thing, however, the Spanish riots of 1850 and the Rock Springs massacre of 1884 are similar: both grew out of alien animosities transplanted to our shores. The acts of the mob at Key West and New Orleans were largely, perhaps wholly, due to the resentment of disaffected Spanish subjects colonized at those points who were ready to abuse the sacred law of hospitality and make the land of their asylum the theater of attacks on the recognized sovereignty of Spain. At Rock Springs, as I have shown, the conflict sprang from labor questions between aliens. But this has no bearing on the question of the indemnity accorded to Spain, which was, as you, indeed, candidly admit in your note, 'a voluntary act of good-will above and beyond the strict authorization of domestic law,' and, I may add, of international law also.

"A measure of international obligation rests on the United States under the third article of the treaty of 1880, which, in the event Chinese laborers or others in the United States 'meet with ill-treatment at the hands of other persons,' requires the Government of the United States to 'exert all its power' to devise measures for their protection, and to secure to them the same 'rights, privileges, immunities, and

xemptions as may be enjoyed by the citizens or subjects of the most avored nation, and to which they are entitled by treaty.'

"That the power of the National Government is promptly and effiiently exercised whenever occasion unhappily arises therefor you have ustly acknowledged and it has been abundantly shown. The condiions under which this power may be applied are not always clear and re sometimes very difficult. Causes growing out of the peculiar characteristics and habits of the Chinese immigrants have induced them to egregate themselves from the rest of the residents and citizens of the Jnited States, and to refuse to mingle with the mass of population as lo the members of other nationalities. As a consequence race prejudice las been more excited against them, notably among aliens of other nationalities who are more directly brought into competition with the Chinese in those ruder fields of merely manual toil wherein our skilled native labor finds it unprofitable to engage. As the conflicting elements are less law-abiding and more ignorant, the clash of their opposed interests is the fiercer. The question of labor competition is one that, in the present condition of the world's history, is causing convulsion in almost every quarter of the civilized world, and the United States, with all their breadth of territory and the advantages of local self-government by and for the people, are by no means exempt from the disorders to which the struggle for bread gives rise.

"Moreover, the Chinese laborers voluntarily carry this principle of isolation and segregation into remote regions where law and authority are well known to be feeblest, and where conflicts of labor and prejudices of race may be precipitated on the slightest pretext and carried without check to limits beyond those possible where the powers of law may be better organized.

"No measures can be devised to meet the problem which do not take this state of things into account, nor can they be effective if they do not contemplate the exercise of authority where it is competent to afford protection, for these measures have only for their object to secure to the Chinese the same rights as other foreigners of the most favored nation enjoy, not superior or special rights. For Chinese labor is not alone repugnant to the local communities; from many quarters of the land comes the same cry—the conflict of different alien laborers and the oppression of the weaker by the stronger. There can and should be no discrimination in applying punitive measures to all infractions of law. And so, too, with preventive measures. What will protect a Hungarian or Italian contract laborer in Pennsylvania, or a Swedish 'non-union' man in Ohio, is equally applicable to a Chinaman on the Pacific coast.

"I have traversed somewhat broader ground than is perhaps required by the propositions of your note of November 30, but I do so because your later note of February 15 appears to enlarge the area of discussion.

"Reverting, however, to your appeal of November 30, which I understand to be a direct application to the sense of equity and justice of the United States for relief for the unfortunate victims of the carnage and excesses of the mob at Rock Springs, I am compelled to state most distinctly that I should fail in my duty as representing the well-founded principles upon which rests the relation of this Government to its citizens, as well as to those who are not its citizens and yet are permitted to come and go freely within its jurisdiction, did I not deny emphatically all liability to indemnify individuals, of whatever race or country, for loss growing out of violations of our public law, and declare with equal emphasis that just and ample opportunity is given to all who suffer wrong and seek reparation through the channels of justice as conducted by the judicial branch of our Government.

"Yet I am frank to say that the circumstances of the case now under consideration contain features which I am disposed to believe may induce the President to recommend to the Congress, not as under obligation of treaty or principle of international law, but solely from a sentiment of generosity and pity to an innocent and unfortunate body of men, subjects of a friendly power, who, being peaceably employed within our jurisdiction, were so shockingly outraged; that in view of the gross and shameful failure of the police authorities at Rock Springs, in Wyoming Territory, to keep the peace, or even to attempt to keep the peace, or to make proper efforts to uphold the law or punish the criminals, or make compensation for the loss of property pillaged or destroyed, it may reasonably be a subject for the benevolent consideration of Congress whether, with the distinct understanding that no precedent is thereby created, or liability for want of proper enforcement of police jurisdiction in the Territories, they will not, *ex gratia*, grant pecuniary relief to the sufferers in the case now before us to the extent of the value of the property of which they were so outrageously deprived, to the grave discredit of republican institutions.

"I trust you will recognize in what I have herein suggested the desire of the United States to carry into effect the 'golden rule' recited in the treaty to which you have made reference, and that in such action you will perceive our wish and purpose to conform and perpetuate the friendship and comity which, I trust, may long exist between our respective countries. You will, I am sure, agree that in good faith, and in compliance with their obligations, the Government of the United States strenuously asserting its power to secure the protection of your countrymen within its jurisdiction."

Mr. Bayard, Sec. of State, to Mr. Cheng Tsao Ju, Feb. 18, 1886. MSS. China. House Ex. Doc. 102, 49th Cong., 1st sess. For. Rel., 1886.

"I transmit herewith for the consideration of Congress, with to appropriate legislation in the premises, a report of the Secr

State, with certain correspondence, touching the treaty right of Chinese subjects other than laborers 'to go and come of their own free will and accord.'

"In my annual message of the 8th of December last I said:

"'In the application of the acts lately passed to execute the treaty of 1880, restrictive of the immigration of Chinese laborers into the United States, individual cases of hardship have occurred beyond the power of the Executive to remedy, and calling for judicial determination.'

"These cases of individual hardship are due to the ambiguous and defective provisions of the acts of Congress approved, respectively, on the 6th May, 1882, and 5th July, 1884. The hardship has in some cases been remedied by the action of the courts. In other cases, however, where the phraseology of the statutes has appeared to be conclusive against any discretion on the part of the officers charged with the execution of the law, Chinese persons expressly entitled to free admission under the treaty have been refused a landing and sent back to the country whence they came, without being afforded any opportunity to show in the courts or otherwise their right to the privilege of free ingress and egress which it was the purpose of the treaty to secure.

"In the language of one of the judicial determinations of the Supreme Court of the United States to which I have referred, 'the supposition should not be indulged that Congress, while professing to faithfully execute the treaty stipulations, and recognizing the fact that they secure to a certain class the right to go from and come to the United States, intended to make its protection depend upon the performance of conditions which it was physically impossible to perform.' (U. S. R., 112, page 554, Chew Heong *v.* U. S.)

"The act of July 5, 1884, imposes such an impossible condition in not providing for the admission, under proper certificate, of Chinese travelers of the exempted classes in the cases most likely to arise in ordinary commercial intercourse.

"The treaty provisions governing the case are as follows:

"'ARTICLE I. * * * The limitation or suspension shall be reasonable, and shall apply only to Chinese who may go to the United States as laborers, other classes not being included in the limitations. * * *

"'ART. II. Chinese subjects, whether proceeding to the United States as teachers, students, merchants, or from curiosity, together with their body and household servants, * * * shall be allowed to go and come of their own free will and accord, and shall be accorded all the rights, privileges, immunities, and exemptions which are accorded to the citizens and subjects of the most favored nation.'

"Section 6 of the amended Chinese immigration act of 1884 purports to secure this treaty right to the exempted classes named by means of prescribed certificates of their status, which certificates shall be the *prima facie* and the sole permissible evidence to establish a right of entry

into the United States. But it provides in terms for the issuance of certificates in two cases only:

(*a*) Chinese subjects departing from a port of China; and

(*b*) Chinese persons (*i. e.*, of the Chinese race) who may at the time be subjects of some foreign Government other than China, and who may depart for the United States from the ports of such other foreign Government.

"A statute is certainly most unusual which, purporting to execute the provisions of a treaty with China in respect of Chinese subjects, enacts strict formalities as regards the subjects of other Governments than that of China.

"It is sufficient that I should call the earnest attention of Congress to the circumstance that the statute makes no provision whatever for the somewhat numerous class of Chinese persons who, retaining their Chinese subjection in some countries other than China, desire to come from such countries to the United States.

"Chinese merchants have trading operations of magnitude throughout the world. They do not become citizens or subjects of the country where they may temporarily reside and trade; they continue to be subjects of China, and to them the explicit exemption of the treaty applies. Yet, if such a Chinese subject, the head of a mercantile house at Hong-Kong or Yokohama or Honolulu or Havana or Colon, desires to come from any of these places to the United States he is met with the requirement that he must produce a certificate, in prescribed form and in the English tongue, issued by the Chinese Government. If there be at the foreign place of his residence no representative of the Chinese Government competent to issue a certificate in the prescribed form, he can obtain none, and is under the provisions of the present law unjustly debarred from entry into the United States. His usual Chinese passport will not suffice, for it is not in the form which the act prescribes shall be the sole permissible evidence of his right to land. And he can obtain no such certificate from the Government of his place of residence, because he is not a subject or citizen thereof, 'at the time,' or at any time.

"There being, therefore, no statutory provision prescribing the terms upon which Chinese persons, resident in foreign countries but not subjects or citizens of such countries, may prove their status and rights as members of the exempted classes in the absence of a Chinese representative in such country, the Secretary of the Treasury, in whom the execution of the act of July 5, 1884, was vested, undertook to remedy the omission by directing the revenue officers to recognize as lawful certificates those issued in favor of Chinese subjects by the Chinese consular and diplomatic officers at the foreign port of departure when visaed by the United States representative thereat. This appears to be a just application of the spirit of the law, although enlarging its letter, and in adopting this rule he was controlled by the authority of high judicial

decisions as to what evidence is necessary to establish the fact that an individual Chinaman belongs to the exempted class.

"He, however, went beyond the spirit of the act, and the judicial decisions, by providing, in a circular dated January 14, 1885, for the original issuance of such a certificate by the United States consular officer at the port of departure in the absence of a Chinese diplomatic or consular representative thereat. For it is clear that the act of Congress contemplated the intervention of the United States consul only in a supervisory capacity, his function being to check the proceeding and see that no abuse of the privilege followed. The power or duty of original certification is wholly distinct from that supervisory function. It either dispenses with the foreign certificate altogether, leaving the consular visa to stand alone and sufficient, or else it combines in one official act the distinct functions of certification and verification of the fact certified.

"The official character attaching to the consular certification contemplated by the unamended circular of January 14, 1885, is to be borne in mind. It is not merely *prima facie* evidence of the status of the bearer, such as the courts may admit in their discretion; it was prescribed as an official attestation, on the strength of which the customs officers at the port of entry were to admit the bearer without further adjudication of his status unless question should arise as to the truth of the certificate itself.

"It became, therefore, necessary to amend the circular of January 14, 1885, and this was done on the 13th of June following, by striking out the clause prescribing original certification of status by the United States consuls. The effect of this amendment is to deprive any certificate the United States consuls may issue of the value it purported to possess, as sole permissible evidence under the statute when its issuance was prescribed by Treasury regulations. There is, however, nothing to prevent consuls giving certificates of facts within their knowledge, to be received as evidence in the absence of statutory authentication.

"The complaint of the Chinese minister, in his note of March 24, 1886, is that the Chinese merchant, Lay Sang, of the house of King Lee & Co., of San Francisco, having arrived at San Francisco from Hong-Kong, and exhibited a certificate of the United States consul at Hong-Kong as to his status as a merchant, and consequently exempt under the treaty, was refused permission to land, and was sent back to Hong-Kong by the steamer which brought him. While the certificate he bore was doubtless insufficient under the present law, it is to be remembered that there is at Hong-Kong no representative of the Government of China competent or authorized to issue the certificate required by the statute. The intent of Congress to legislate in execution of the treaty is thus defeated by a prohibition directly contrary to the treaty; and

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President Cleveland, Special Message of Apr. 6, 1886.

e fourth section of the act of Congress, approved May 6, 18…
ter 126, as amended by the act of July 5, 1884, chapter 120, p…
oing the certificate which shall be produced by a Chinese laborer …
"only evidence permissible to establish his right of re-entry" in …
United States, is not applicable to Chinese laborers who, residi…
this country at the date of the treaty of November 17, 1880, depart…
sea before May 6, 1882, and remained out of the United States un…
fter July 5, 1884.
Chew Heong v. U. S., 112 U. S., 536.

In virtue of the treaty between the United States and China of 184…
all citizens of the United States in China enjoy complete rights of e…
territoriality, and are answerable to no authority but that of the Unite…
States. The whole subject examined.
7 Op., 495, Cushing (1855).

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Report adverse to taking action on certain memorials. Feb. 18, 1879. House Rep. 111, 45th Cong., 3d sess.

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Character of the instructions given to United States minister to China on subject. President's message. Apr. 12, 1880. House Ex. Doc. 70, 46th Cong., 2d sess.

Report recommending suspension of, for twenty-five years. Jan. 26, 1882. House Rep. 67, 47th Cong., 1st sess.

Veto of Senate bill 71. President's message. Apr. 4, 1882. Senate Ex. Doc. 148, 47th Cong., 1st sess.

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Report of George F. Seward, minister to China. President's message. May 15, 1882. Senate Ex. Doc. 175, 47th Cong., 1st sess.

Letter from the Secretary of the Treasury relating to the enforcement of the "Act to execute certain treaty stipulations relating to Chinese" (with map). Jan. 18, 1884. Senate Ex. Doc. 62, 48th Cong., 1st sess.

Majority and minority reports on the bill to amend the act approved May 6, 1882 Mar. 4, 1884. House Rep. 614, 48th Cong., 1st sess.

Chinese indemnity fund. Report in favor of returning it to China. Feb. 21, 1879. House Rep. 113, 45th Cong., 3d sess.

Amendment to the bill providing for the return of the money to China. Apr. 16, 1880. House Rep. 1124, 46th Cong., 2d sess.

Report in favor of returning it to China. Mar. 22, 1884. House Rep. 970, 48th Cong., 1st sess.

As to transit of Chinese in United States, see Mr. Bayard to Mr. Morrow, Mar. 30, 1886; see Mr. Bayard to Mr. Fairchild, Mar. 31, 1886. MSS. Dom. Let.

As to territorial rights in China, see App., Vol. III, § 67.

(12) JAPAN.

§ 68.

"Your dispatch of May 8 (No. 20) has been received, together with the letter mentioned therein, written by the Tycoon of Japan to the President, and the letter from the ministers of foreign affairs addressed to myself.

"All these papers relate to a proposition of the Japanese Government that the opening of the cities of Yedo and Osacca and the harbors of Hiogo and Neëgata, as stipulated in our existing treaty, shall be post-

poned. Your own counsel, as given in your dispatch, is that discretionary power be given to the diplomatic agent of the United States to act in concert with his colleagues, the representatives of other powers standing in relations towards Japan similar to those of the United States.

"The course suggested is, as you doubtless were aware, different from what has been contemplated by the President. He holds, however, your ability and discretion in high consideration, and therefore care will be taken to review the subject fully, upon consultation, if possible, with the representatives here of the other powers concerned. As soon as the subject shall have been thus considered, you will receive a definitive communication in relation to it.

"In the mean time you will inform the Tycoon and the ministers for foreign affairs that their letters have been received and taken into consideration, with a due desire to establish the intercourse between the United States and Japan on the best and surest foundations."

Mr. Seward, Sec. of State, to Mr. Harris, July 23, 1861. MSS. Inst., Japan; Dip. Corr., 1861.

"I recur again to your dispatch of the 1st of August, 1860 (No. 26).

"In that paper you recommended a postponement for another year of the exercise of the right of American citizens to reside in the city of Yedo for the purpose of trade after the 1st of January next, saved to the United States by a clause in the third article of the treaty of July 29, 1858.

"In my dispatch to you of the 16th May last (No. 15), I stated that I had then addressed a note in relation thereto to the minister of Prussia in the United States, of which a copy was sent to you, and also that a similar note had been addressed to the ministers of Great Britain, France, Russia, and Holland, and that when replies to those communications should have been received by the Department, no time would be lost in acquainting you with their contents.

"The burden of the circular note thus addressed to the ministers of Great Britain, France, Prussia, Russia, and Holland, was that the President might, perhaps, have yielded to your suggestion if the circumstances which surround the subject had remained unchanged; but we had learned by recent dispatches that Mr. Heusken, secretary of the American legation at Yedo, was, on the night of the 15th of January last, waylaid and assassinated in the streets of that city without any other cause or provocation than the fact that he was a foreigner.

"The Japanese Government had made no satisfactory explanation of this great violation of the rights of the United States, and, on the other hand, had virtually confessed its inability to bring the offenders to punishment.

"It was argued by me in the aforesaid notes that the Japanese Government would infer that we are unwilling or unable to vindicate our

rights, if, leaving that transaction unpunished and unexplained, we should frustrate the effect of the treaty stipulation for the opening of the city of Yedo.

"The President was, for this reason, of opinion that no postponement of the opening of the city of Yedo ought to be conceded. He thought, however, that some demonstration, which would render the residence of foreigners in Yedo safe, ought to be made, and that the other powers consulted would probably be induced to co-operate in such a demonstration, because their representatives are equally exposed there with our own. The President therefore proposed that those powers should announce to the Government of Japan their willingness and their purpose to make common cause and co-operate with this Government in exacting satisfaction, if the Japanese Government should not at once put forth all possible effort to secure the punishment of the assassins of Mr. Heusken, and also in making requisitions with signal vigor if any insult or injury should be committed against any foreigner residing in Yedo, after the opening of the city in January next, according to the treaty.

"The ministers addressed, as I have reason to know, promptly submitted these suggestions to their respective Governments, together with a form of a convention for carrying them into effect. This projected convention contemplated the dispatch of a fleet of steamers adequate to impress the Japanese Government with the ability and the determination of the states engaged to secure a performance of its treaty stipulations.

"Subsequently to these proceedings, and while no answers had yet been received from the Governments consulted, your dispatch (No. 20) of the date of May 8, 1861, was received, accompanied by a letter addressed by his Majesty the Tycoon to the President of the United States, and also a letter to myself, written by the Japanese ministers of foreign affairs.

"Those letters expressed the desire of the Government of Japan that the opening of the cities of Yedo and Osacca, and the harbors of Hiogo and Neëgata, should be postponed for the reasons more specifically set forth in the latter communication. These reasons are, in substance, that the opening of the commerce of Japan to the western nations has had immediate results very different from what were anticipated. The prices of articles of general consumption are daily advancing, owing to the extensive exportation, while but little is imported, and the people of the humble class, not being able to supply their wants, as heretofore, attribute this to foreign trade. Even higher and wealthier classes, we are told, are generally not favorably disposed towards commerce, so that soon there may be those who will condemn the abrogation of the prohibition of former times and desire the re-establishment of the ancient law. We are informed also that these results, following immediately upon the radical change of policy of the Government, have

produced a very general uneasiness, which is increased by referring to the stipulations in the treaties for the opening of the ports of Hiogo and Neëgata and the freedom of trade at Yedo and Osacca, in view of the approach of the time when those franchises will be due by the effect of the treaties with the United States, Great Britain, France, Prussia, Russia, and Holland. We are informed that it would be a matter of great difficulty for the Government to exert its power and authority for the purpose of demonstrating the benefits to be realized at some future day, and thus causing its subjects to submit to the present uneasiness for some time longer. In reviewing the subject in your dispatch (No. 20) you observe that you have seen no reason to change your own view of the expediency of consenting to a postponement of the opening of the city of Yedo.

"You remark, also, that Osacca, being in the *Tien* or Heavenly district, where the Mikado or spiritual ruler of Japan resides, it is probable a residence of foreigners there would be regarded with dislike by a portion of the Japanese people; that Hiogo is simply the sea-port of Osacca, and its opening naturally depends on that of the city, while Neëgata is a place of minor consideration. Your argument on the subject concludes that the opening of the Japanese commerce has temporarily produced a great increase in the cost of subsistence of official persons enjoying fixed and limited incomes, while their salaries have not yet been correspondingly increased. Upon the whole, you suggest that discretionary power be given to you to act in concert with the ministers of the other powers interested, in such manner as shall be most advisable for the welfare of both countries.

"We are sensible of the very great perplexity of dealing with a Government whose constitution is so different from our own, and whose subjects have fixed sentiments and habits so very peculiar. Moreover, we have the utmost confidence in your ability and discretion, while we know that it might be hazardous to every interest already secured to substitute a policy of our own, adopted at this distance, for one which you find necessary on the spot.

"The President has, therefore, concluded to confer upon you the discretion solicited by you. To make your way easier, this determination has not been adopted without previous consultation here with the ministers before consulted, who will, of course, communicate the result of the conference to their respective Governments. This proceeding will, for the present, suspend the plan of a naval demonstration, before proposed by the United States. I must, however, urgently insist that, except in the extremest necessity, you do not consent to any postponement of any covenant in the existing treaty, without first receiving satisfaction of some marked kind for the great crime of the assassination of Mr. Heusken while in the diplomatic service of the United States.

"We leave the form and mode of that satisfaction to your own discretion. It would be best, if possible, to secure the punishment of the

assassins. But circumstances unknown to us must enter into the question, and will modify your action. The principle, however, seems to us too important to be abandoned. If the western states can keep their representatives safely in Japan, they can, perhaps, wait for the facilities stipulated; but if their ministers shall be obliged by force or terror to withdraw, all will be lost that has, at such great cost, been gained. The President acknowledges the letter of the Tycoon, and I reply briefly to the ministers for foreign affairs. Those replies accompany this dispatch."

Same to same, Aug. 1, 1861, *ibid.*

"Your dispatch of June 7 (No. 21) has been received.

"It affords the President sincere pleasure to know that the Government of the Tycoon has exerted so much diligence to bring the assassins of Mr. Heusken to punishment, and that you are satisfied that those exertions have been made with good faith. It is expected that the Government will not abate its efforts until the end so important to a good understanding between the two countries shall have been attained.

"The punishment of the delinquent Yakonines, who were in attendance on the deceased when the crime was committed, is regarded by this Government with high approbation."

Same to same, Oct. 7, 1861, *ibid.*

"Mr. Robert H. Pruyn has been appointed to succeed you, and, I presume, will reach Yedo as early as January next. You will, of course, remain in the discharge of official duties until relieved by his arrival."

Same to same, Oct. 21, 1861, *ibid.*

"Generally a foreign mission is eminently desirable. It is no small honor to be the organ of one's country in her communications with a foreign state. The opportunities which such a position affords to serve two nations, and, consequently, the whole family of mankind, cannot fail to awaken a noble ambition in any generous and benevolent mind.

"But I fear you will find embarrassments in your mission which will make you regret its honors and undervalue its powers.

"Japan is a semi-enlightened and isolated country, only recently compelled into treating with the United States, as it has also been with the other western powers. The judgment of its Government has been convinced, and, I have no doubt, its sentiments have been won to this new relation with the United States through the great discretion of the late Commodore Perry, and the wonderful sagacity and patience of your predecessor, Mr. Harris. But it is notorious that the people of Japan, especially its ruling classes, have not yet reconciled themselves to the sudden and complete revolution of national habits, of which there is no memory to the contrary existing among them. Hitherto, as we have

reason to believe, the Japanese Government and people have been kinder in their sentiments towards us than towards other western nations with whom they have framed treaties under the same circumstances.

"But the time has now come for our trial. When we gently coerced Japan into friendship with us we were a united nation. We did not admit that there then was, or, indeed, that there ever had been, a stronger one in the world. Our mercantile and our naval marine vindicated this high pretension on every sea, however distant from our own continent. Nine months have wrought a great and melancholy change in this proud position. We are divided by faction, and engaged in civil war. The national authority is tasked for its utmost vigor to maintain our flag within our own territory, and our commerce is harassed by pirates of our own kindred, even in our own waters.

"You know that we have no doubt of our success in putting down this unhappy insurrection and restoring the Federal authority. You have already seen how the Government daily gains strength, and how the insurrection already begins to decline. But what will be the influence of the news of our divisions among the semi-barbarians of Japan, magnified and painted, as they will doubtless be, by strangers, enemies of the Republic, its prosperity, and its power? Will the Government of Japan retain the fear which, perhaps, was the best guarantee of its good-will towards us? Will the misguided faction in Japan, so hostile to all foreigners, suffer the Government to remain in friendship with a nation that will seem to them to have lost the virtue of patriotism so essential to command the respect of other nations? Already we have heard that the Chinese authorities, informed of our divisions, have come to underrate our power, and to disregard our rights. Is this evil to be experienced also in Japan? To prevent it is the responsibility of your mission. To watch and guard the national interests there, while the storms of faction are spending their force against the Government at home, will be your chief duty. It will require great dignity and firmness, combined with equal prudence and moderation. I can give you only one counsel: have faith, under all circumstances, in the virtue of your countrymen, and, consequently, in the triumph of the Union. If you fail in that faith, your distrust will be discovered by the ill-informed and feeble-minded community around you. They will have no respect for a Government which they think more pretentious while it is weaker than their own; your mission will be a failure, and perhaps end in disaster and danger. If you have that faith, you can impress it upon the Government and people of Japan, and their friendly relations towards us may be retained until, our domestic differences being ended, we are able once more to demonstrate our power in the East, and establish our commerce there on secure foundations. You will find no open questions for discussion in your mission. It is important to preserve friendly and intimate relations with the representatives of other western powers in

Japan. You will seek no exclusive advantages, and will consult freely with them upon all subjects, insomuch as it is especially necessary, at this time, that the prestige of western civilization be maintained in Yedo as completely as possible. In short, you will need to leave behind you all memories of domestic or European jealousies or antipathies, and will, by an equal, just, and honorable conduct of your mission, make the simple people of Japan respect, not only the institutions of your own country, but the institutions of Christianity and of western civilization."

Mr. Seward, Sec. of State, to Mr. Pruyn, Nov. 15, 1861. MSS. Inst., Japan; Dip. Corr., 1861.

"Your dispatch of April 10 (No. 15) has been submitted to the President. It is an occasion of sincere regret that the Government of Japan has not been able to guarantee the safety of foreigners sojourning in the country, and that it has thus been brought to the necessity of yielding to demands of indemnity under coercion. I am bound to believe that that crisis which you have informed me was approaching, has now actually passed. I can give you, therefore, only instructions with reference to what may be expected to be the condition of affairs existing at the time when this communication shall have reached you. It is manifestly the interest and duty of all the western powers to maintain harmony and good accord in Japan. We have not only the right, but also good reason, for supposing that Her Majesty's Government will not seek any conquest or exclusive advantage in that Empire as a result of any conflict which may have taken place. So long as the operations of the British Government shall be confined to the attainment of the objects announced in preliminary communications, it will be your duty to lend to them all the moral support in your power. And the naval forces of the United States which may be present, while protecting the American legation and American citizens sojourning there, will take care not to hinder, oppose, or embarrass the British authorities in the prosecution of those objects. The United States having no grievances of their own to complain of against Japan, will not unite in hostilities against that Government, but they will, at the same time, take care not to disapprove of or censure, without just cause, the measures which Great Britain adopts to obtain guarantees which, while they are necessary for her, must also result in the greater security of all the western nations."

Mr. Seward, Sec. of State, to Mr. Pruyn, June 29, 1863. MSS. Inst., Japan Dip. Corr., 1863.

"I have the honor to acknowledge the reception of your several dispatches bearing the dates and numbers following, namely: April 30, No. 16; May 1, No. 17; May 1, No. 18; May 1, No. 19; May 2, No. 20; May 3, No. 21; May 3, No. 22; May 4, No. 23. I have also received from George S. Fisher, the United States consul at Kanagawa, two dis-

patches, one of which, numbered 15, bears the date of May 7, and the other, written under the date of May 8, is marked 17.

"Speaking in a practical sense, I may observe that all these papers advert to the critical condition of the relations between the western treaty powers and Japan, which has arisen subsequently to the demand upon the Tycoon for indemnities which has been made by the British Government, or, at least, that the various questions which the dispatches present are to be considered in view of that extraordinary condition of affairs.

"The leave of absence for six months, within the next year, which you have solicited, will be granted, if the political crisis that now exists in Japan shall, in the mean time, pass off without producing any change inconsistent with or adverse to the relations created by the treaty now existing between this country and that Empire. * * *

"I have carefully read your two notes addressed to Mr. Neale, Her Britannic Majesty's chargé d'affaires, in relation to the demand he has made upon the Tycoon's Government, and it gives me pleasure to say that I find nothing in them to disapprove. The counsel that you gave Mr. Neale was not obtrusive, and it seems to me to have been quite discreet as well as humane. On the other hand, this Government, if it were disposed to be querulous, might well complain of some injurious statements and reflections which have found place in Mr. Neale's portion of the correspondence. Nevertheless, the President permits me to pass them by, for two reasons: First, the good faith of the United States towards Great Britain and all the other treaty powers in regard to Japan, is impressed upon the records of our diplomatic intercourse with them. As yet it has not even been questioned; and it is not likely to be questioned by any one of those Governments, or by any agent authorized to speak in their behalf. Secondly, the common interests of civilization and humanity require that there shall be concert and unity among the treaty powers, in the present crisis, unobstructed by jealousy or suspicion, or unkind debate of any sort. From all the papers before me I learn that this was the situation of affairs at Yedo on the 8th of May, namely: That the British legation had demanded indemnities, which must be conceded on or before the 21st, or else that the British fleet would proceed to hostilities against Japan. Secondly, that the French naval forces were prepared to act in concert and co-operation with the British. Thirdly, that it was doubtful whether the indemnities would be seasonably conceded by the Tycoon's Government. Fourthly, that if that Government should conclude to yield the indemnities, yet that, under the auspices of the Mikado and a combination of daimios hostile to the foreign policy of the Tycoon, a civil war was very likely to break out. Fifthly, that a popular excitement was prevailing which rendered the continuance of peace uncertain in every event, and that foreigners were assaulted and put in jeopardy of their lives by armed bodies of the Japanese, and among such foreigners were several Americans. Sixthly,

it may be inferred from this circumstance that whatever claims the citizens of the United States might have to friendship, protection, or even freedom from danger, such citizens are likely to be confounded with all other foreigners in any uprising or disturbance of the public peace. Seventhly, the Wyoming, at the date of these dispatches, had gone to Hong-Kong for repairs. I learn here, however, that her repairs were completed on the 27th of April, and that she was then about to proceed to Kanagawa, so that she probably was there as early as the 21st of May, the day finally appointed for the decision of the Tycoon's Government to be communicated.

"I shall now give you the President's opinion of your duty, and that of the commander of the Wyoming, in view of the situation which may be expected to be existing when this dispatch shall have reached Japan: Your whole moral influence must be exerted to procure or preserve peace between the other treaty powers and Japan, based, if necessary, on a compliance, by the latter power, with the terms prescribed by them, inasmuch as it is not doubted that those terms will be demanded simply with a view to the necessary security of foreigners of all nations remaining in Japan.

"Second. If the authorities of Japan shall be able to excuse themselves for the injuries which Americans may have suffered at the hands of Japanese subjects, and shall in good faith have granted adequate indemnities, or be proceeding to afford them, and also shall be able to guarantee the safety of American residents, the subject may rest; and while there the Wyoming will not commit any hostile act against the Japanese Government or power. But, on the contrary, if in your judgment it shall be necessary for the Wyoming to use her guns, for the safety of the legation or of Americans residing in Japan, then her commander will employ all necessary force for that purpose. If the members of the legation, or of the consulates, find it at any time unsafe to remain in Japan, they will, of course, seek a safe retreat as convenient as possible, and will report to this Department.

While executing these instructions you will, so far as may be in your power, continue to cultivate friendly sentiments on the part of the Japanese Government, declaring, however, to them and to the representatives of the other powers, that in doing so you are seeking no exclusive or distinct advantage for this Government, but only the common interests of all nations in that extraordinary country.

"The Secretary of the Navy will give all necessary instructions to the commander of the Wyoming in harmony with the views of the President expressed in this dispatch."

Same to same, July 7, 1863, *ibid.*

"I have just received your dispatches of May 8 (No. 24), May 8 (No. 25), May 11 (No. 26), May 12 (No. 27). By these papers I learn the

definitive propositions which had been submitted by the British and French legations at Yedo to the Tycoon previously to the 11th of May, and their purpose to adopt coercive measures in concert, after the 21st of that month, if those propositions should be rejected. I learn also from the same dispatches the divisions and distraction there existed in the Japanese councils, and that the people were in an excited condition, which foreboded either the outbreak of civil war, or, more probably, the acceptation of a foreign war; and, most painful of all, the papers confirm the accounts which had before been received from the consul at Kanagawa of unprovoked violence committed at that place upon American citizens by subjects of the Tycoon.

"It is a source of much satisfaction that the Wyoming had returned to that port in the midst of these occurrences, as had already been anticipated by the Government here. On a careful review of all these facts, it is believed that there is no necessity to modify the instructions which were given you in my dispatch of the 7th instant (No. 43).

"In regard to the acts of violence committed upon the persons of American citizens, it is presumed that you have required that the offenders shall be brought to punishment by the Tycoon's Government without delay. It is left in your discretion whether, under the circumstances which shall be existing when this dispatch shall reach you, it is expedient to insist upon pecuniary forfeitures, or compensations to be paid by the Government in addition to the punishment of the offenders. If you think it expedient, you are at liberty to say to the ministers of foreign affairs that the President has reserved this question for consideration after the difficulties now existing between the Government of the Tycoon and the British Government shall have been adjusted, and the peaceful condition of affairs which prevailed before the disturbance occurred shall have been renewed.

"The President is profoundly sensible of the inefficiency of the instructions you have heretofore received for your safe guidance in an emergency that was not foreseen, and could not be anticipated. When the instructions now given you shall have arrived, the condition of affairs in Japan may be such as to render them inapplicable. Under these circumstances you must exercise a large discretion, governed by two primary considerations, namely: First, to deserve and win the confidence of the Japanese Government and people, if possible, with a view to the common interest of all the treaty powers; secondly, to sustain and co-operate with the legations of those powers in good faith, so as to render their efforts to the same end effective. It may be not altogether easy to apply these two principles in the conduct of details. You will, however, make the best effort to do so, and will be permitted to judge which of them must give way in any case of irreconcilable conflict."

Same to same, July 10, 1863, *ibid.*

our several dispatches have been received, which bear dates and ers as follows:

ay 26, No. 29; May 26, No. 30; June 12, No. 31; June 15, No. 32; 15, No. 33; June 16, No. 34; June 17, No. 35; June 18, No. 36; 20, No. 37; June 22, No. 38; June 23, No. 39; June 24, No. 40; 24, No. 41; and June 24, No. 42.

ue acknowledgments will be made to the French and British Gov- ents for the hospitalities and sympathies which were extended to y their respective ministers on the occasion of your being driven your residence in Yedo.

our proceedings in relation to the claims of Switzerland, Belgium, ia, Denmark, Sweden, and Brazil, to enter into treaty relations Japan, are approved.

everal very important subjects are presented for consideration in lispatches. First, the destruction by fire of the residence of the on at Yedo. Secondly, your removal of the legation to Yokohama. ly, the differences between the British Government and that of . Fourthly, the order of the Tycoon, requiring foreigners to with- from the Empire. Fifthly, the questions between Japan and the d States which have resulted from the occurrences thus brought review. It will be proper to draw into connection with this last the violences which have been committed against some of our citi- as reported to this Department in your previous communication, 12th of May last, No. 28, and which were commented upon in my ctions of the 10th of July last.

aving taken the President's directions, I proceed to consider these sting and important questions.

irst. The facts submitted by you raise a strong presumption that t of firing the residence of the legation was committed by incen- s, with a purpose at once political and hostile to the United States, hat the Government of Japan could probably have foreseen and nted it, and that they have at least given to it tacit assent and escence.

econdly. The President is satisfied that your removal of the lega- rom Yedo to Yokohama was prudent and wise, in view of the cir- ances then existing in Japan, and the proceeding is approved. t is equally clear that the Government of Japan ought to have so olled those circumstances as to have rendered the removal unnec- ; and that it is bound to provide for your safe return to Yedo, or the secure and permanent re-establishment of the legation in apital.

hirdly. Your proceedings in regard to the controversy which has n between the British Government and that of Japan appear to been conciliatory, and to have been equally just and fair towards parties, without at all compromising any rights of the United States, hey are approved.

"Fourthly. It is with much regret that the President has arrived at the conclusion that the Government of Japan has failed to keep its faith, solemnly pledged by treaty, with the United States. This regret is rendered the more painful by the reflection that this Government has, from its first acquaintance with Japan, conducted all its intercourse with the Tycoon with the utmost sincerity, frankness, and friendship. The United States have constantly conceded, on their own part, and sought to conciliate other powers in their intercourse with Japan. If our advice has been followed, the dangers which now threaten the Empire would have been averted, and Japan would have been able to profit by a peaceful yet free and equal intercourse with all nations. Even now, although the Government of Japan has done so much and suffered so much to be done to alienate and injure the United States, the President is still disposed to persevere in the same liberal and friendly course of proceedings which he has hitherto pursued in regard to Japan. But the friendship of this country cannot be secured by the Government and people of Japan, nor would it be of any avail, if the United States should fail to maintain their own dignity and self-respect in their intercourse with Japan with the same firmness which they practice in regard to all other nations.

"(1) You will, therefore, demand of the Government of the Tycoon prompt payment of a sum sufficient to indemnify all the losses which were sustained by yourself and other members of the legation on the occasion of the firing of your official residence.

"(2) You will demand that diligent efforts be made to discover the incendiaries and bring them to condign punishment.

"(3) You will demand proper and adequate guarantees for your safe return to Yedo, and the permanent re-establishment of the legation there without delay.

"(4) You will insist on the full observance of the treaties between the United States and Japan in all the particulars which have not been heretofore waived or postponed by this Government.

"(5) You will demand a reasonable indemnity, to be fixed by you for the injuries which have been sustained by any American citizen from any acts of violence committed against them by Japanese subjects. And you will further demand that diligent efforts be made by the Tycoon's Government to bring the aggressors to justice, and to inflict upon them such punishment as will be calculated to prevent further outrages of the same kind.

"You will employ the naval force at your command to protect yourself, the legation, and others of our countrymen, under any circumstances which may occur; and you will inform the Government of the Tycoon that the United States will, as they shall find occasion, employ additional forces to maintain the foregoing demands.

"So far as you may have occasion to counsel or act in regard to the controversy which is pending between Great Britain and

will be guided by the letter and spirit of previous instructions from this Department.

"You will send to me authenticated and verified accounts of the losses which have been sustained by yourself and other members of the legation by the burning of your residence in Yedo, to the end that an application may be made to Congress for an adequate appropriation for the proper indemnity.

"It is hardly necessary to say that you will, so far as is possible, execute these instructions in no spirit of resentment, or even of anger; but, on the contrary, while exhibiting the necessary firmness, you will make it manifest to the Tycoon's Government that the novel and perilous circumstances which attend its situation are fully understood and appreciated by the President, and that he desires, with the utmost sincerity and friendship, to favor the interests of internal peace in Japan, and of peace between that country and the several powers of Europe and America."

Same to same, Sept. 1, 1863, *ibid.*

"Your interesting dispatches of the 25th of June (No. 23), the 26th of June (No. 44), and the 27th of June (No. 45), have been submitted to the President.

"In my instructions of the 1st of September (No. 46) I have anticipated the events occurring in Japan, which these papers have brought to my knowledge, and no special reply to them seems necessary, except that I shall invite the attention of the other treaty powers to the suggestion which you make concerning the expediency of demanding a ratification of the treaties by the Mikado, and of proper demonstrations to secure that ratification."

Same to same, Sept. 9, 1863, *ibid.*

"I have the honor to acknowledge the reception of your dispatches of the 24th of July (No. 48), 24th of July (No. 49), and July 25 (No. 50), which furnish the details of the assault made by the Prince of Nagato, or the Japanese, upon the American merchant ship Pembroke, and the proceedings of Commander McDougall, in the United States steamship-of-war Wyoming, under your sanction, to redress that wrong. The paper further describes the aggressions committed by the same parties against Dutch and British merchantmen, with the proceedings adopted by the representatives of all the treaty powers in regard to these outrages. Your proceedings connected with them are fully and cheerfully approved. You will, in all cases, hold the claims of this Government and of citizens of the United States distinct and separate from those of other Governments and subjects of other powers. But this separation will not be expected to restrain you from acting with your colleagues, and giving them your moral support; and when there is need, with reference to common defense, or to save a common right, or secure a common object, just and lawful in itself, the naval force of the United

States will be expected to co-operate with those of the other western powers.

"Having been advised by your dispatch of the 8th of August, which came from San Francisco by telegraph, that the Tycoon has returned to Yedo, and that your relations with his Government are much improved, I deem it inexpedient to restrain your discretion at present by special instructions, but cheerfully wait the development of events which must have occurred since that communication was sent."

Same to same, Oct. 3, 1863, *ibid.*

As to memorandum in 1864 between the United States and Great Britain, France, and the Netherlands, relative to the coercive measures to be adopted against the Prince of Choshiu in the Straits of Shimonasaki, see Brit. and For. St. Pap. for 1872–'73, vol. 63.

It is proper that the representatives of the United States in Japan should unite with other diplomatic agents in that country in advising that the Japanese laws prohibiting Christianity should be repealed.

Mr. Seward, Sec. of State, to Mr. Van Valkenburgh, Oct. 7, 1867. MSS. Inst., Japan. See Mr. Seward to Mr. Van Valkenburg, Oct. 5, 1868, *ibid.*

As to exclusion of Americans from the Japanese island of Amakusa, see Mr. Fish, Sec. of State, to Mr. De Long, Sept. 15, 1870. MSS. Inst., Japan.

"It is to me inconceivable that there are no courts in Japan. There must be tribunals or officers of some kind for settling civil controversies. The sixth article of the treaty of 1858 (Consular Regulations, page 157) refers to such courts. The treaty, in effect, remits American creditors of Japanese subjects to such courts, and on general principles they must accept such remedies as the Government of Japan provides for its own subjects, waiting for diplomatic intervention till the case of a denial of justice is established. If the minister will instruct his countrymen on this subject, he will be relieved of the duties of an attorney in private controversies. * * *

"It is not deemed advisable to propose or ask of Congress a measure providing for an examiner of claims in Japan. The minister should not be deprived of his full responsibility about urging claims, but it would be well for our ministers everywhere to refrain from anything like a peremptory presentation of a claim until after it has been examined in this Department, except in cases of urgent emergency. The Government has frequently found itself at quite an advanced stage of the discussion of a doubtful claim, before this Department had any information, or, if any, inadequate information, for a judgment upon the case."

Mr. Fish, Sec. of State, to Mr. De Long, Jan. 21, 1871. MSS. Inst., Japan; For. Rel., 1871.

"I am not prepared, without further reflection, to assume the broad ground that the Government of Japan is bound to allow our citizens to conduct at the open ports any business which is lawful by the laws of the United States, or even any and every business which may be law-

ful by the laws of all other civilized nations. A country having what we regard as an imperfect civilization may, for that very reason, find it necessary to establish and maintain police regulations in the interest of internal order touching with more or less severity upon trade of various kinds which this country and the western powers generally deem it safe to leave untrammeled."

Mr. Fish, Sec. of State, to Mr. De Long, May 11, 1871. MSS. Inst., Japan.
As to distinctive features of the political system of Japan, see Mr. Fish, Sec. of State, to Mr. De Long, May 20, 1871. MSS. Inst., Japan.

"Foreigners in Japan, as in any other country, are subject to its jurisdiction, except so far as it is limited by express or tacit convention. All that has been sought by the Christian powers is to withdraw their subjects from the operation of such laws as conflict with our ideas of civilization and humanity, and to keep the power of trying and punishing in the hands of their own representatives. It is proper, therefore, for the latter, when they find a Japanese regulation, not found, in our case, in the statutes or the common law, to acquaint their countrymen with the fact of such recognition, and that it will be enforced according to our methods and in our tribunals. This, combining the sanction of the two Governments, avoids, on the one hand, the assertion of the absolute immunity of our citizens from any Japanese regulation, however reasonable and necessary, and, on the other hand, of an unqualified legislative power in our diplomatic and consular representatives—a position which it seems judicious to maintain until Congress shall act on the subject."

Mr. Fish, Sec. of State, to Mr. De Long, May 21, 1871. MSS. Inst., Japan.

"It seems to me within the legitimate police powers of the Government of Japan to prohibit their subjects from assembling to bet upon the prices of staple commodities which the sham seller does not intend to deliver, nor the buyer to take into possession. The circumstance that an American citizen presides over the mock auction or furnishes the building where it takes place does not impair that power."

Mr. Hunter, Acting Sec. of State, to Mr. De Long, July 1, 1871. MSS. Inst., Japan.

Concert between the treaty powers as to Japan should be maintained "at least until after the revision of the treaties, and until the Government of Japan shall have exhibited a degree of power and capacity to adopt and enforce a system of jurisprudence and judicial administration in harmony with that of the Christian powers, equal to their ardent desire to be relieved from the enforced duties of extraterritoriality."

Mr. Fish to Mr. N. Fish, Sept. 2, 1874. MSS. Inst., Germ.; For. Rel., 1874.
As to general impolicy of joint action of foreign ministers, see *infra*, § 102.

"Your dispatch of the 5th ultimo, No. 1523, in relation to the require-

British order in council, of the 25th of October, 1881, to
t a foreign resident in Japan, of any other than British
n order to the maintenance by him of a civil action in the
ular courts in that country against an English subject,
btain and file in the court the consent in writing of the
uthority of his own nation to his submitting, and that he
it, to the jurisdiction of the court, and, if required by the
security to the satisfaction of the court, and, if required by th
nt as the court directs, by deposit or otherwise, to pay fees,
costs, and expenses, and abide by and perform the decision
en either by the court or an appeal,' has been received; and
ction with a dispatch of the 21st of June last, No. 632, from
General Van Buren on the same subject, and, indeed, relating
precise case which Mr. Stahel presents to you, has received at
consideration.

The general question was brought to the attention of the Department
by Consul-General Van Buren in April last, in his dispatch No.
and on the 9th of May following, Mr. Bancroft Davis, Assistant
etary of State, replied, by instruction No. 277, to Mr. Van Buren,
he conceived the requirement of the British order in council to be
r and just.' Although the instruction referred to was brief, it was
vertheless, the result of careful consideration, as Mr. Davis was
at moment engaged in examination of the general question of extra-
rritoriality, and had the whole subject before him.

"Mr. Stahel, in his reply to the British consul, an extract from which
General Van Buren transmits in his No. 632, of June 21 last, says:

"'Further, it appears to me that such submission, with my consent,
to the jurisdiction of your court, to have the effect which the order in
council you refer to must have contemplated, would require me, in case
of need, to execute the judgment of your court, thus placing not only
citizens of the United States under the jurisdiction of, but, virtually,
the United States consular court officers subject to the orders of, Her
Majesty's court.'

"I am unable to perceive that any such result would follow from the
permission (for that is the proper word) of the United States consul to
a citizen of his nation, or from anything in the terms of the order in
council which is now before me. The citizen of the United States suing
a British subject, in a British court, under the conditions referred to,
submits himself to the process of the court in which the proceedings
are had—nothing less and certainly nothing more.

"You advance two objections to the British requirement:

"First. That the British court may adjudge damages against the
American plaintiff and in favor of the English defendant in a claim of
the latter in nowise connected with or growing out of the plaintiff's
cause of action.

"I think you will at once perceive that this objection is met by provision C in 47 of the order in council. But, secondly, you add, that the court may, in case the plaintiff fails to perform its decision in the premises, commit the American citizen to a British consular prison by order of a British consular court.

"With great deference for any opinion that you might express on any legal question, I must be permitted to say that that appears to me to be a forced construction of the order. Except for contempt and to enforce specific orders and decrees in chancery, imprisonment cannot properly be an element of procedure in civil actions in English any more than in American courts. * * * It appears to me most desirable that in its administration (that of the extrajudicial system established by Christians in Japan) harmony and comity should be cultivated between the different foreign nationalities, and that niceties and technical views should be as far as possible ignored, thereby facilitating that justice to foreign residents in those countries which the system was intended to secure.

"You will consider the views imparted to General Van Buren by Mr. Bancroft Davis in the instruction already referred to, a copy of which I inclose, as the ruling of the Department.

"I also transmit for your convenience a copy of a letter on the general subject, addressed to the chairman of the Senate Committee on Foreign Relations, on the 29th of April last, by the Secretary of State."

Mr. John Davis, Acting Sec. of State, to Mr. Bingham, Aug. 11, 1882. MSS. Inst., Japan; For. Rel., 1882.

"The English contention has hitherto been, under the most-favored-nation clause of the treaties, that it is absolute, and that even when Japan may bargain with any power to give it a favor for an equivalent, the like favor must be granted to England without equivalent.

"The Japanese contention is the reverse of this, being that if a favor for a specific condition be stipulated with any one nation, no other may enjoy the favor except upon identical or equivalent conditions.

"The theory on which this Government views the question is akin to that of Japan. For example, the United States have just concluded a commercial treaty with Mexico by which each country especially favors the other by putting on its free list certain dutiable products. Under the favored-nation clause of our treaties with other nations we are not bound to give their products the benefit of our free list, even though such country may not impose any duty on the articles which Mexico has free-listed in our favor; but we would be willing to stipulate to give a third power the favor we give Mexico in exchange for some equivalent favor not general as towards the rest of the world.

"The British contention and our own are in manifest conflict. How far the German proposition may cover our ground depends on the inter-

pretation to be given to the phrase 'provisions of execution' (Ausführungs-bestimmungen). By this, as appears from the instruction of April 4, 1884, is to be understood 'provisions of a purely administrative character, or such as relate to custom-house business.'"

Mr. Frelinghuysen, Sec. of State, to Mr. Bingham, June 11, 1884, MSS. Inst., Japan.

As to "favored nation," see *infra*, § 134.

The Government of the United States is not responsible to that of Japan for the lynching and murder of a Japanese subject in Utah by a mob which could not have been quelled by due diligence and energy by the Government. In this case the Japanese had previously shot and killed a woman "without excuse or justification."

Mr. Frelinghuysen, Sec. of State, to Mr. Kuki Rinichi, Oct. 18, 1884. MSS. Notes, Japan.

The following Congressional documents may be referred to in this relation:

Resolution requesting a report as to the expediency of returning the indemnity fund to Japan, after deducting all just claims for damages, &c., properly chargeable to that fund. Dec. 15, 1875. House Mis. Doc. 24, 44th Cong., 1st sess.

Return of, to Japan recommended; but a sufficient sum to cover the claims of naval officers and crews be retained. Mar. 22, 1876. Senate Rep. 169. 44th Cong., 1st sess.

Resolution of Chamber of Commerce of New York favoring a return of the fund to Japan after paying the damages sustained by citizens of the United States. Feb. 7, 1876. Senate and House Mis. Docs. 80, 44th Cong., 1st sess.

As to extraterritorial jurisdiction in Japan, see Mr. Bayard, Sec. of State, to Mr. Hubbard, Apr. 5, 1886. MSS. Inst., Japan.

Report favoring return of, to Japan, after satisfying certain claims. June 7, 1878. House Rep. 913, 45th Cong., 2d sess. Mar. 31, 1880. House Rep. 669, 46th Cong., 2d sess. Jan. 13, 1881. Senate Rep. 752, 46th Cong., 3d sess.

Favorable report. Jan. 31, 1882. House Rep. 138, 47th Cong., 1st sess.

Favorable report; amount of the accumulated fund. Feb. 7, 1882. Senate Rep. 120, 47th Cong., 1st sess.

Resolution declaring the right of the United States to the indemnity received, and that if it ever be returned it be done without interest or premiums. Jan. 6, 1883. Senate Mis. Doc. 20, 47th Cong., 2d sess.

Memorial of American residents in Japan asking for legislation for their Government. Mar. 22, 1882. Senate Mis. Doc. 70, 47th Cong., 1st sess.

As to consular jurisdiction in Japan, see further *infra*, §§ 125, 153, and see also Mr. Eli T. Sheppard's pamphlet on "Extraterritorialty" in reference to Japan.

The correspondence in 1850 relative to the visit of the Preble to Japan for the purpose of demanding imprisoned American seamen, is given in House Ex. Doc. No. 84, 31st Cong., 1st sess.

Documents relating to official intercourse with, prior to 1852, are given in Senate Ex. Doc. No. 59, 32d Cong., 1st sess.

The report of the Secretary of the Navy, Jan. 29, 1855, relative to the naval expedition to Japan, is given in Senate Ex. Doc. No. 34, 33d Cong., 2d sess.

The correspondence prior to 1860, in regard to missions to Japan, is given in Senate Ex. Doc. No. 25, 36th Cong., 1st sess.

(13) TURKEY, TRIPOLI, AND TUNIS.

§ 68*a*.

Citizens of the United States, in common with all other foreign Christians, enjoy the privileges of extraterritoriality in Turkey, including Egypt, as well as in the Turkish regencies of Tripoli and Tunis, and also in the independent Arabic states of Morocco and Muscat.

Status of Americans in Turkey, 7 Op., 565, Cushing, 1855. See, fully, App., Vol. III, 68*a*, and as to protection, *infra*, § 168.

As to consular jurisdiction in, see *infra*, § 125.
As to right of asylum in, § 104.
As to treaties with, § 165.

V.—*RECOGNITION OF BELLIGERENCY.*

§ 69.

"It is a well-known fact that the vessels of the South American provinces were admitted into the ports of the United States under their own or any other flags, from the commencement of the Revolution, and it is equally true that throughout the various civil contests that have taken place at different periods among the states that sprung from that Revolution, the vessels of each of the contending parties have been alike permitted to enter the ports of this country. It has never been held necessary, as a preliminary to the extension of the rights of hospitality to either, that the chances of the war should be balanced and the probability of eventual success determined. For this purpose it has been deemed sufficient that the party had declared its independence and at the time was actually maintaining it. Such having been the course hitherto pursued by this Government, however important it might be to consider the probability of success, if a question should arise as to the *recognition of the independence of Texas*, it is not to be expected that it should be made a prerequisite to the mere exercise of hospitality implied by the admission of the vessels of that country into our ports. The declaration of neutrality by the President in regard to the existing contest between Mexico and Texas was not intended to be confined to the limits of that province or of 'the theater of war,' within which it was hardly to be presumed that any collision would occur or any question on the subject arise, but it was designed to extend everywhere and to include as well the United States and their ports as the territories of the conflicting parties. The exclusion of the vessels of Texas, while those of Mexico are admitted, is not deemed compatible with the strict neutrality which it is the desire and the determination of this Government to observe in respect to the present contest between those countries; nor is it thought necessary to scrutinize the character or authority of the flag under which they may sail, or the validity of the commission under which they may be commanded, when the rights of this

country and its citizens are respected and observed. In this frank expression of the views and policy of the United States in regard to a matter of so much interest as the war now waging between Mexico and its revolted province, it is hoped that new evidence will be perceived, not only of the consistency and impartiality of this Government in its relations with foreign countries, but of the sincere desire which is entertained, by such an exposition of its course, to cherish and perpetuate that friendly feeling, which will see in the scrupulous regard that is paid to the rights of other, and even of rival, parties, one of the surest guarantees that its own will continue to be respected."

Mr. Forsyth, Sec. of State, to Mr. Gorostiza, Sept. 20, 1836. MSS. Notes, Mex

If citizens of the United States, enlisted in the service of an insurgent power whom the United States acknowledges as belligerent, but which is not so acknowledged by the parent state, should be treated when captured by the parent state otherwise than as prisoners of war, and their release, when demanded by the United States, should be refused, "consequences of the most serious character would certainly ensue."

Mr. Webster, Sec. of State, to Mr. Thompson, Apr. 5, 1842. MSS. Inst., Mex. See further *infra*, § 381.

For Mr. Webster's Hülsemann note of Dec. 21, 1850, as to Hungarian intervention, see *supra*, § 47.

"I am not aware that in this country any solemn proceeding, either legislative or executive, has been adopted for the purpose of declaring the status of an insurrectionary movement abroad, and whether it is entitled to the attributes of civil war. Unless, indeed, in the formal recognition of a portion of an Empire seeking to establish its independence, which, in fact, does not so much admit its existence as it announces its result, at least so far as regards the nation thus proclaiming its decision. But that is the case of the admission of a new member into the family of nations."

Mr. Cass, Sec. of State, to Mr. Osma, May 22, 1858. MSS. Notes, Peru.

"Mr. Osma insists, however, that a civil war in one country cannot be known to the people of another but through their own Government; that the existence or non-existence of civil war is a question not of fact but of law, which no private person has a right to decide for himself; that foreigners must regard the former state of things as still existing, unless their respective Governments have *recognized* the change. But I am very clearly of the opinion that an American citizen who goes to southern Peru may safely act upon the evidence of his own senses. If he sees that the former Government has been expelled or overturned by a civil revolution, and a new one set up and maintained in its place, he cannot be molested or even blamed for regulating his behavior by the laws thus established. Nay, he has no choice; the Government *de facto* will compel his obedience. It will not give him leave to ignore

the matter of fact while he waits for the solution of a legal problem at home. Besides, if he resists the authority of the party in possession on the ground that another has the right of possession, he departs from his neutrality, and so violates the duty he owes to both the belligerents, as well as to the laws of his own country."

Mr. Cass, Sec. of State, to Mr. Clay, Nov. 26, 1858. MSS. Inst., Peru.

In the Br. and For. St. Pap. for 1859–'60, 1126, vol. 50, will be found the correspondence of the United States with Peru, relative to the recognition by the United States of the existence of civil war between Vivanco and Castillo. See also same work for 1860–'61, vol. 51.

In an article entitled "A famous diplomatic dispatch," in the North American Review for April, 1886, Mr. Rice gives an account of the instruction of May 21, 1861, sent by Mr. Seward to Mr. Adams, United States minister at London, in relation to the recognition by Great Britain of the belligerency of the Southern Confederacy. Mr. Lincoln's interlineations and corrections in Mr. Seward's draft, a fac-similie of which accompanies the article, show with what care he avoided all unnecessary disclosures of policy, and all remarks which might give unnecessary offense or provoke hostility.

As to protests against recognition by Great Britain and France of belligerency of Confederate States, see Mr. Seward, Sec. of State, to Mr. Dayton, May 30, 1861. MSS. Inst., France. See also same to same, June 17, July 6, Oct. 30, 1861; Apr. 15, 1862; Mr. Seward to Mr. Adams, Aug. 10, 1865. MSS. Inst., Gr. Brit.

The recognition by Great Britain of Southern belligerency is discussed by Goldwin Smith in 13 Macmillan's Mag., 168.

"Mr. Adams, minister in London, in adverting, June 14, 1861, to the concession of belligerent rights to the Confederates, remarks: 'At any rate there was one compensation, the act had released the Government of the United States from responsibility for any misdeeds of the rebels towards Great Britain. If any of their people should capture or maltreat a British vessel on the ocean, the reclamation must be made only on those who had authorized the wrong. The United States would not be liable.' Papers relating to Foreign Affairs, &c., p. 89."

Lawrence's Wheaton (ed. 1863), 44. See on this point *infra* rulings in this section, and also §§ 223 *ff.*

"Your dispatch of April 9, No. 297, has been submitted to the President.

"You have rightly interpreted to Mr. Drouyn de l'Huys our views concerning the issue of letters of marque. The unrestrained issue of piratical vessels from Europe to destroy our commerce, break our blockade of insurrectionary ports, and invade our loyal coast would practically be an European war against the United States none the less real or dangerous for wanting the sanction of a formal declaration. Congress has committed to the President, as a weapon of national defense, the authority to issue letters of marque. We know that it is a weapon that cannot be handled without great danger of annoyance to the neutrals and friendly commercial powers. But even that hazard must be incurred rather than quietly submit to the apprehended greater evil.

There are now, as you must have observed, indications that that apprehended greater evil may be averted through the exercise of a restraining power over the enemies of the United States in Great Britain. Hopeful of such a result, we forbear from the issue of letters of marque, and are content to have the weapon ready for use if it shall become absolutely necessary. (See *infra*, § 385.)

"It gives me great pleasure to acknowledge that, beyond what we deem the original error of France in recognizing, unnecessarily, as we think, the insurgents as a belligerent, we have every reason to appreciate the just and impartial observance of neutrality which has been practiced in the ports and harbors of France by the Government of the Emperor. In any case it will be hereafter, as it has been hitherto, a pleasng duty to conduct all our belligerent proceedings so as to inflict no wrong or injury upon the Government or the people of the French Empire.

"You have also done the country a good service in explaining, in your conversations with Mr. Drouyn de l'Huys, the manner in which we have heretofore maintained our neutrality in foreign wars, by enforcing our enlistment laws, which are in all respects the same as those of Great Britain.

"The President has received with much interest Mr. Drouyn de l'Huys's exposition of the policy of the French Government in regard to the insurrection in Poland. The Emperor of Russia seems to us to have adopted a policy of beneficent reform in domestic administration. His known sagacity and his good dispositions encourage a hope that Poland will not be denied a just share of the imperial consideration if, as seems now to be generally expected in Europe, the revolution attempted by her heroic people shall be suppressed.

"I do not care to speak often upon the war of France against Mexico. The President confidingly believes that the Emperor has no purpose of assuming, in the event of success, the Government of that Republic. Difficult as the exercise of self-government there has proved to be, it is, nevertheless, quite certain that the attempt to maintain foreign authority there would encounter insurmountable embarrassment. The country possesses immense, practically inexhaustible, resources. They invite foreign labor and capital from all foreign countries to become naturalized and incorporated with the resources of the country and of the continent, while all attempts to acquire them by force must meet with the most annoying and injurious hindrance and resistance. This is equally true of Mexico and of every portion of the American continent. It is more than a hundred years since any foreign state has successfully planted a new colony in America, or even strengthened its hold upon any one previously existing here. Through all the social disturb-

ances which attend a change from the colonial state to independence, and the substitution of the democratic for the monarchical system of government, it still seems to us that the Spanish-American states are steadily advancing towards the establishment of permanent institutions of self-government. It is the interest of the United States to favor this progress, and to commend it to the patronage of other nations. It is equally the interest of all other nations, if, as we confidently believe, this progress offers to mankind the speediest and surest means of rendering available to them the natural treasures of America."

Mr. Seward, Sec. of State, to Mr. Dayton, Apr. 24, 1863. MSS. Inst., France. Dip. Corr., 1863.

"This Government insists now in these cases, as it insisted in the beginning of our domestic strife, that the decisions of the Emperor's Government, like those of other maritime powers, by which the insurgents of this country, without a port or a ship or a court of admiralty, are recognized by France as a naval belligerent, are in derogation of the law of nations and injurious to the dignity and sovereignty of the United States, that they have never approved or acquiesced in those decrees, and that they regard these late proceedings in relation to the Florida and Georgia, like those of a similar character which have occurred in previous cases, as just subjects of complaint. The same views are entertained so far as they apply to the new maritime regulations. We claim that we are entitled to have our national vessels received in French ports with the same courtesy that we ourselves extend to French ships of war, and that all real or pretended insurgent vessels ought to be altogether excluded from French ports. We expect the time to come, and we believe it is not distant, when this claim will be acknowledged by France to be both reasonable and just."

Mr. Seward, Sec. of State, to Mr. Dayton, Mar. 21, 1864. MSS. Inst., France.
See further, as to recognition of Confederate belligerency, Senate Ex. Doc. No. 11, 41st Cong., 1st sess.; and see also 2 Phill. Int. Law (3d ed.), 25.
As sustaining the recognition of the Confederate Government as belligerent, see speech of Sir George Cornewall Lewis, Oct. 17, 1862, cited in 1 Lawrence com. sur droit int., 200.

"The President does not deny, on the contrary he maintains, that every sovereign power decides for itself, on its responsibility, the question whether or not it will, at a given time, accord the status of belligerency to the insurgent subjects of another power, as also the larger question of the independence of such subjects and their accession to the family of sovereign states.

"But the rightfulness of such an act depends on the occasion and the circumstances, and it is an act, like the sovereign act of war, which the morality of the public law and practice requires should be deliberate, seasonable, and just, in reference to surrounding facts; national belligerency, indeed, like national independence, being but an existing

fact, officially recognized as such, without which such a declaration is only the indirect manifestation of a particular line of policy."

Mr. Fish, Sec. of State, to Mr. Motley, Sept. 25, 1869. MSS. Inst., Gr. Brit.

"But circumstances might arise to call for it. A ship of the insurgents might appear in the port of the neutral, or a collision might occur at sea, imposing on the neutral the necessity to act. Or actual hostility might have continued to rage in the theater of insurgent war, combat after combat might have been fought for such a period of time, a mass of men may have engaged in actual war until they should have acquired the consistency of military power, to repeat the idea of Mr. Canning, so as evidently to constitute the fact of belligerency, and to justify the recognition by the neutral. Or the nearness of the seat of hostilities to the neutral may compel the latter to act; it might be his sovereign duty to act, however inconvenient such action should be to the legitimate Government."

Mr. Fish, Sec. of State, to Mr. Motley, Sept. 25, 1869. MSS. Inst., Gr. Brit.

"The question of according or withholding rights of belligerency must be judged, in every case, in view of the particular attending facts. * * * This conflict must be one which will be recognized in the sense of international law as war. Belligerency, too, is a fact. The mere existence of contending armed bodies, and their occasional conflicts, do not constitute war in the sense referred to."

President Grant, Seventh Annual Message, 1875.

Prior to the acknowledgment by the United States of the independence of the southern Spanish-American colonies, informal agents were sent to them by the President (see *supra*, § 47); but diplomatic agents from several of these states were refused at the same time official diplomatic recognition at Washington, though personally received.

See Abdy's Kent, 135; Dana's Wheaton, note 121.

Mr. Seward (Ex. Doc. 20, 39th Cong., cited in Dana's Wheaton, note 41; Mr. Seward to Mr. Bigelow, Mar. 13, 1865, Dip. Corr., 1865, pt. 3, 378) took the ground that the United States Government would decline to hold intercourse, official or unofficial, with agents from insurgents against Governments with whom the United States were at peace. But when a belligerent is recognized as such, this implies an intercourse, at least between agents, in reference to terms of belligerency. This intercourse may be very informal, and, when between belligerents who are parties to a civil war, may for a time be limited to negotiations for exchange of prisoners and for cognate objects. But, as in the case of the late civil war in the United States, the sovereign against whom the insurrection is directed, will, from the necessity of the case, hear informally and unofficially agents from belligerent insurgents as to terms of surrender.

As to reception, informally, by Mr. Seward of agents of the unrecognized Government of Maximilian, see *infra*, § 70. See also Mr. Blaine, Sec. of State, to Mr. Fish, Apr. 5, 1881. MSS. Inst., Switz, quoted *infra*, § 70.

Admitting a sovereign, who is endeavoring to reduce his revolted subjects to obedience, to possess both sovereign and belligerent rights, and to be capable of acting in either character, the manner in which he acts must determine the character of the act; *i. e.*, whether it is an exercise of belligerent rights or exclusively of his sovereign power.

Rose *v.* Himely, 4 Cranch, 241.

"A civil war," said Judge Grier, giving the opinion of the Supreme Court in the Prize Cases, 2 Black, 667, "is never solemnly declared; it becomes such by its accidents—the number, power, and organization of the persons who originate and carry it on. When the party in rebellion occupy and hold in a hostile manner a certain portion of territory; have declared their independence; have cast off their allegiance; have organized armies; have commenced hostilities against their former sovereign, the world acknowledges them as belligerents and the contest a war."

"To the Confederate Government was conceded, in the interest of humanity, and to prevent the cruelties of reprisals and retaliation, such belligerent rights as belonged, under the law of nations, to the armies of independent Governments engaged in war against each other. The Confederate States were belligerents in the sense attached to that word by the law of nations."

Harlan, J., Ford *v.* Surget, 97 U. S., 594.

As to recognition by the United States of the belligerency of foreign insurgents, see the Divina Pastora, 4 Wheat., 52; the Neustra Senora, *ibid.*, 497.

That this applies to the question of the recognition of a State government by the Federal Government, see Luther *v.* Borden, 7 Howard, 1.

"There may be a difficulty in ascertaining when the fact of war begins, and this difficulty is the greater in cases of insurrection or revolt, where many of the antecedents and premonitory tokens of war are wanting, where an insurrection may be of little account and easily suppressed, and where war bursts out full-blown, it may be, at once. Our Government has more than once professed to govern its action by the following criteria expressed in Mr. Monroe's words relating to the Spanish South American revolts: 'As soon as the movement assumes such a steady and consistent form as to make the success of the provinces probable, the rights to which they were entitled by the law of nations, as equal parties to a civil war, have been extended to them.' But this rule breaks down in several places. The probability is a creature of the mind, something merely subjective, and ought not to enter into a definition of what a nation ought to do. Again, the success does not depend on steadiness and consistency of form only, but on relative strength of the parties. If you make probability of success the criterion of right in the case, you have to weigh other circumstances before being able to judge which is most probable, success or defeat. Would you, if you conceded belligerent rights, withdraw the concession whenever success ceased to be probable? And, still further, such provinces in revolt are not entitled by the law of nations to *rights* as equal parties to a civil war. They have properly no rights, and the concession of belligerency is not made on their account, but on account of con-

siderations of policy on the part of the state itself which declares them such, or on grounds of humanity.

"Precedents are to be drawn chiefly from modern times. The revolt of the low countries was hardly an analogous case, for they were states having their especial charters, not connected with Spain, except so far as the King of Spain was their suzerain. In our Revolutionary war, precedent was not all on one side. Great Britain stoutly declared Paul Jones to be a pirate, because he was a British subject under commission from revolting colonies, and Denmark agreed to this. In the South American revolutions, the concessions of belligerent rights were given freely by neutrals, most freely by the United States; and, as for proclamations, our Government went so far as to issue one, in 1838, 'for the prevention of unlawful interference in the civil war in Canada,' where no civil or military organization had been set up. The true time for issuing such a declaration, if it is best to issue it at all, is when a revolt has its organized Government prepared by law for war on either element or on both, and when some act, involving the open intention and the fact of war, has been performed by one or both of the parties. Here are two facts, the one political, the other pertaining to the acts of a political body. The fact of war is either a declaration of war or some other implying it, like a proclamation of blockade, or, it may be, actual armed contest.

"Was there, then, a state of war when the British proclamation of neutrality was given to the world, or did the facts of the case justify the British Government in the supposition that such a state of war existed? Here everything depends on facts and on opinions derived from facts. We find opinions expressed by eminent men among ourselves in the first half of May, 1861, that war had already begun, which some of them conceived of as beginning with the attack on Fort Sumter. We find a number of States seceding from the Union, whose territories made a continuous whole, which formed a constitution, and chose public officers, a President among the rest. This President made a proclamation touching letters of marque and reprisal, and told his congress that two vessels had been purchased for naval warfare. We find next two proclamations of the President of the United States, one of April 15, calling for a large force of the militia of the States, and another of April 19, after the proclamation of the Confederate President inviting letters of marque and reprisal had become known at Washington, announcing an intention to set on foot a blockade. On the 6th of May, the Southern Congress sanctioned the proclamation concerning letters of marque, recognized a state of war, and legislated on cruisers and capture. We pass over many acts of violence, such as seizures of forts and other public property within the Confederate States. Intelligence of President Lincoln's blockade reached London on the evening of May 2. Copies of it were there received between the 5th of May and the 11th. On the 13th the Queen's proclamation of neutrality was issued.

"The President's proclamation of blockade announced a measure which might have important international consequences. It was, in fact, a declaration of a state of war on the sea. 'He deemed it advisable,' he says, 'to set on foot a blockade, in pursuance of the laws of the United States and of the laws of nations.' And vessels exposing themselves to penalty for violating the blockade would be 'captured and sent to the nearest convenient port, for such proceeding against them and their cargoes, as prize, as might be deemed advisable.' Several neutral vessels were captured between April 19 and July 13, on

which last day Congress sanctioned the proceedings of the Government. The validity of the captures came before the Supreme Court, and the question when the war began became a very important one. The court decided that the President had a right, *jure belli*, to institute a blockade of ports in the possession of the rebellious States, and that blockade was an act of war.

"It would seem, then, that if the British Government erred in thinking that the war began as early as Mr. Lincoln's proclamation in question, they erred in company with our Supreme Court. (See the 'Alabama question,' New Englander for July, 1869; Black's Reports, ii, 635 *ff.*; Dana on Wheaton, 374, 375; Lawrence's Wheaton (2d ed., supplem.), p. 13; and Pomeroy's Introd. to Constit. Law, §§ 447–453.)"

Woolsey, Int. Law, app. iii, note 19.

"The occasion for the accordance of belligerent rights arises when a civil conflict exists within a foreign state. The reason which requires and can alone justify this step by the Government of another country is that its own rights and interests are so far affected as to require a definition of its own relations to the parties. Where a parent Government is seeking to subdue an insurrection by municipal force, and the insurgents claim a political nationality and belligerent rights which the parent Government does not concede, a recognition by a foreign state of full belligerent rights, if not justified by necessity, is a gratuitous demonstration of moral support to the rebellion, and of censure upon the parent Government. But the situation of a foreign state with reference to the contests, and the condition of affairs between the contending parties, may be such as to justify this act. It is important, therefore, to determine what state of affairs, and what relations of the foreign state, justify the recognition.

"It is certain that the state of things between the parent state and insurgents must amount, in fact, to a *war*, in the sense of international law—that is, powers and rights of war must be in actual exercise; otherwise the recognition is falsified, for the recognition is of a fact. The tests to determine the question are various, and far more decisive where there is maritime war and commercial relations with foreigners. Among the tests are the existence of a *de facto* political organization of the insurgents sufficient in character, population, and resources to constitute it, if left to itself, a state among the nations, reasonably capable of discharging the duties of a state; the actual employment of military forces on each side, acting in accordance with the rules and customs of war, such as the use of flags of truce, cartels, exchange of prisoners, and the treatment of captured insurgents by the parent state as prisoners of war; and, at sea, employment by the insurgents of commissioned cruisers, and the exercise by the parent Government of the rights of blockade of insurgent ports against neutral commerce, and of stopping and searching neutral vessels at sea. If all these elements exist, the condition of things is undoubtedly war; and it may be war before they are all ripened into activity.

"As to the relation of the foreign state to the contest, if it is solely on land, and the foreign state is not contiguous, it is difficult to imagine a call for the recognition. If, for instance, the United States should formally recognize belligerent rights in an insurgent community at the center of Europe, with no sea-ports, it would require a hardly supposable necessity to make it else than a mere demonstration of moral support. But a case may arise where a foreign state must decide whether to hold

the parent state responsible for acts done by the insurgents, or to deal with the insurgents as a *de facto* Government. (Mr. Canning to Lord Granville on the Greek war, June 22, 1826.) If the foreign state recognizes belligerency in the insurgents, it releases the parent state from responsibility for whatever may be done by the insurgents, or not done by the parent state where the insurgent power extends. (Mr. Adams to Mr. Seward, June 11, 1861, Dip. Corr., 105.) In a contest wholly upon land, a contiguous state may be obliged to make the decision whether or not to regard it as a war; but, in practice, this has not been done by a general and prospective declaration, but by actual treatment of cases as they arise. Where the insurgents and the parent state are maritime, and the foreign nation has extensive commercial relations and trade at the ports of both, and the foreign nation and either or both of the contending parties have considerable naval force, and the domestic contest must extend itself over the sea, then the relations of the foreign state to this contest are far different.

"In such a state of things the liability to political complications, and the questions of right and duty to be decided at once, usually away from home, by private citizens or naval officers, seem to require an authoritative and general decision as to the status of the three parties involved. If the contest is a war, all foreign citizens and officers, whether executive or judicial, are to follow one line of conduct; if it is not a war, they are to follow a totally different line. If it is a war the commissioned cruisers of both sides may stop, search, and capture the foreign merchant vessel, and that vessel must make no resistance and must submit to adjudication by a prize court; if it is not a war, the cruisers of neither party can stop or search the foreign merchant vessel; and that vessel may resist all attempts in that direction, and the ships-of-war of the foreign state may attack and capture any cruiser persisting in the attempt. If it is war, foreign nations must await the adjudication of prize tribunals; if it is not war, no such tribunal can be opened. If it is war, the parent state may institute a blockade *jure gentium* of the insurgent ports, which foreigners must respect; but if it is not a war, foreign nations having large commercial intercourse with the country will not respect a closing of insurgent ports by paper decrees only. If it is a war, the insurgent cruisers are to be treated by foreign citizens and officials, at sea and in port, as lawful belligerents; if it is not a war, those cruisers are pirates, and may be treated as such. If it is a war, the rules and risks respecting carrying contraband, or dispatches, or military persons, come into play; if it is not war, they do not. Within foreign jurisdiction, if it is a war, acts of the insurgents in the way of preparation and equipments for hostility may be breaches of neutrality laws; while, if it is not war, they do not come into that category, but under the category of piracy or of crimes by municipal law.

"Now, all citizens of a foreign state, and all its executive officers and judicial magistrates, look to the political department of their Government to prescribe the rule of their conduct in all their possible relations with the parties to the contest. This rule is prescribed in the best and most intelligible manner for all possible contingencies by the simple declaration that the contest is or is not to be treated as war. If the state of things requires the decision, it must be made by the political department of the Government. It is not fit that cases should be left to be decided as they may arise, by private citizens, or naval or judicial officers, at home or abroad, by sea or land. It is, therefore, the custom

of nations for the political department of a foreign state to make the decision. It owes it to its own citizens, to the contending parties, and to the peace of the world, to make that decision seasonably. If it issues a formal declaration of belligerent rights prematurely, or in a contest with which it has no complexity, it is a gratuitous and unfriendly act. If the parent Government complains of it, the complaint must be made upon one of these grounds. To decide whether the recognition was uncalled for and premature requires something more than a consideration of proximate facts and the overt and formal acts of the contending parties. The foreign state is bound and entitled to consider the preceding history of the parties; the magnitude and completeness of the political and military organizations and preparations on each side; the probable extent of the conflict by sea and land; the probable extent and rapidity of its development; and, above all, the probability that its own merchant vessels, naval officers, and consuls may be precipitated into sudden and difficult complications abroad. The best that can be said is, that the foreign state may protect itself by a seasonable decision—either upon a test case that arises or by a general prospective decision—while, on the other hand, if it makes the recognition prematurely, it is liable to the suspicion of an unfriendly purpose to the parent state. The recognition of belligerent rights is not solely to the advantage of the insurgents. They gain the great advantage of a recognized status, and the opportunity to employ commissioned cruisers at sea, and to exert all the powers known to maritime warfare, with the sanction of foreign nations. They can obtain abroad loans, military and naval materials, and enlist men, as against everything but neutrality laws; their flag and commissions are acknowledged, their revenue laws are respected, and they acquire a quasi-political recognition. On the other hand, the parent Government is relieved from responsibility for acts done in the insurgent territory; its blockade of its own ports is respected; and it acquires a right to exert, against neutral commerce, all the powers of a party to a maritime war."

Mr. Dana, note to Dana's Wheaton, § 23.

This passage is cited by Sir A. Cockburn in his opinion in the Geneva Tribunal, with the following prefix: "The principles by which a neutral state should be governed as to the circumstances under which, or the period at which, to acknowledge the belligerent status of insurgents, have been nowhere more fully and ably, or more fairly, stated than by Mr. Dana, in his edition of Wheaton, in a note to section 23."

"It has been the constant practice of European nations, and of the United States, to 'look upon belligerency as a fact rather than a principle,' holding with Mr. Canning, 'that a certain degree of force and consistency acquired by a mass of population engaged in war entitled that population to be treated as belligerent.' Instances, too, are numerous, from the time when the North American colonies threw off the yoke of England, down to the period when, at an early stage of hostilities between the United States and the Confederate States, it was resolved by the Governments of England and France to treat the Southern Confederacy in accordance with acknowledged principles as a belligerent."

Abdy's Kent (1878), 94, citing Hansard, vol. clxii, p. 1566. Annual Reg., 1861, p. 114.

"It is easy to see what they (the United States) gained (by the acknowledgment of Confederate belligerency). They gained the liberty to exercise against British ships on the high seas the rights of visit and search, of capturing contraband, and of blockade, rights which spring solely from the relation of belligerent and neutral, and which the neutral acknowledges by recognizing the existence of that relation. The advantages reaped in maritime war from the exercise of such rights fall where there is a disparity of force, into the hands of the stronger belligerent; where the disparity is great he has a monopoly of them, for he is able to shut up his enemy in port and drive him from the sea."

Bernard's Neutrality of Gr. Brit., 167.

"The steadfast determination of the Government neither to say nor do anything which could reasonably be construed into an interference, was tested in November, 1862, when it was proposed by the Emperor of the French that the Courts of France, Russia, and Great Britain should tender their good offices to both belligerents, in the hope of preparing the way for an accommodation. M. Drouyn de l'Huys, in addressing himself to the British Government, dwelt on the 'innumerable calamities and immense bloodshed' which attended the war, and on the evils which it inflicted upon Europe. The two contending parties, he said, had up to that time fought with balanced success, and there appeared to be no probability that the strife would soon terminate. He proposed, therefore, that the three courts should join in recommending an armistice for six months, during which means might be discovered for effecting a lasting pacification. The British Government declined to take part in such a recommendation, being satisfied that there was no reasonable prospect of its being entertained by that of the United States. 'Depend upon it, my lords,' said Earl Russell, addressing the House of Peers in 1863, 'that, if this war is to cease, it is far better that it should cease by a conviction both on the part of the North and on that of the South that they can never live together again happily as one community and as one Republic, and that the termination of hostilities can never be brought about by the advice, the mediation, or the interference of any European power.'"

Ibid., 467.

Where the people of a Republic are divided into two hostile parties, who take up arms and oppose one another by military force, civil war exists, without regard to the cause of the dispute. A revolutionary party, like a foreign belligerent power, is supreme over the country it conquers as far and as long as its arms can carry and maintain it. Foreign vessels obtaining and using licenses and clearances from such a party, are not liable to punishment by the other party afterwards for so doing.

9 Op., 140, Black, 1858.

As to recognition of United States belligerency by France and Holland during the American Revolution, see Annual Reg., 1779, 249.

As to Danish recognition of the belligerency of the United States during the American Revolution, see 3 Sparks's Dip. Corr., 121; 8 Sparks's Life of Franklin, 407.

As to distinction between "insurgency" and "belligerency," see 33 Alb. Law J., 125, Feb. 13, 1886.

As to recognition of insurgency as a preliminary to belligerency, see *infra*, § 381.

That Confederate cruisers were not pirates, see *infra*, § 381.

VI. *RECOGNITION OF SOVEREIGNTY.*

§ 70.

"I am perfectly sensible that your situation must, ere this reaches you, have been delicate and difficult; and though the occasion is probably over, and your part taken of necessity, so that instructions now would be too late, yet I think it just to express our sentiments on the subject as a sanction of what you have probably done. Whenever the scene became personally dangerous to you, it was proper you should leave it, as well from personal, as public motives. But what degree of danger should be attended, to what distance or place you should retire, are circumstances which must rest with your own discretion, it being impossible to prescribe them from hence. With what kind of Government you may do business is another question. It accords with our principles to acknowledge any Government to be rightful which is formed by the will of the nation, substantially declared. The late Government was of this kind, and was accordingly acknowledged by all the branches of ours; so any alteration of it which shall be made by the will of the nation, substantially declared, will doubtless be acknowledged in like manner. With such a Government *every kind* of business may be done. But there are some matters which I conceive might be transacted with a Government *de facto*, which, for instance, as the reforming the unfriendly restrictions on our commerce and navigation, such as you will readily distinguish as they occur. With respect to this particular reformation of their regulations, we cannot be too pressing for its attainment, as every day's continuance gives it additional firmness, and endangers its taking root in their habits and constitution; and, indeed, I think they should be told, as soon as they are in a condition to act, that if they do not revoke the late innovations, we must lay addition and equivalent burdens on *French* ships by name."

Mr. Jefferson, Sec. of State, to Mr. Morris, Nov. 7, 1792. MSS. Inst., Ministers.

"The royal family left Paris on the 19th instant, at midnight, and took the road for Lille. Yesterday morning I received a note from Count Jarcourt stating the departure of the King, and informing me that he would see with pleasure the diplomatic corps, without, however, constraining those who prefer to return to their respective courts. * * * The Emperor has not yet appointed his minister of foreign relations. I think it is probable Caulaincourt will be appointed. I shall endeavor to see the minister shortly after his appointment for business purposes which are specified."

Mr. Crawford, minister at Paris, to Mr. Monroe, Sec. of State, (unofficial), Mar. 21, 1815. Monroe Pap., Dept. of State.

"There is a stage in such (revolutionary) contests when the party struggling for independence has, as I conceive, a right to demand its acknowledgment by neutral parties, and when the acknowledgment may

be granted without departure from the obligations of neutrality. It is the stage when the independence is established as matter of fact, so as to leave the chance of the opposite party to recover their dominion utterly desperate. The neutral nation must, of course, judge for itself when this period has arrived; and as the belligerent nation has the same right to judge for itself, it is very likely to judge differently from the neutral, and to make it a cause or pretext for war, as Great Britain did expressly against France in our Revolution, and substantially against Holland. If war thus results, in point of fact, from the measure of recognizing a contested independence, the moral right or wrong of the war depends upon the justice and sincerity and prudence with which the recognizing nation took the step. I am satisfied that the cause of the South Americans, so far as it consists in the assertion of independence against Spain, *is just*. But the justice of a cause, however it may enlist individual feelings in its favor, is not sufficient to justify third parties in siding with it. The fact and the right combined can alone authorize a neutral to acknowledge a new and disputed sovereignty."

Mr. Adams, Sec. of State, to Mr. Monroe, President, Aug. 24, 1816. MSS. Monroe Pap., Dept. of State.

President Monroe's message of Mar. 25, 1818, giving the papers in the Department relative to South American independence down to that date, is contained in House Doc. No. 293, 1st sess., 15th Cong., 4 Am. St. Pap. (For. Rel.), 173 *ff*. President Monroe's message of Jan. 29, 1819, on the same subject, with the accompanying papers, is contained in House Doc. No. 309, 2d sess., 15th Cong.; 4 Am. St. Pap. (For. Rel.), 412.

As to the effort of the allied European powers to prevent the recognition of the independence of the South American colonies by the United States, see Mr. Gallatin, minister at Paris, to Mr. Adams, Sec. of State, Aug. 10, 1818. 2 Gallatin's Writings, 73.

"I had upon every occasion stated that the general opinion of the United States must irresistibly lead to such a recognition; that it is a question, not of interest, but of feeling, and that this arose much less from the wish of seeing new Republics established than that of the emancipation of Spanish America from Europe. * * * We had not, either directly or indirectly, excited the insurrection. It had been the spontaneous act of the inhabitants, and the natural effect of causes which neither the United States nor Europe could have controlled. We had lent no assistance to either party; we had preserved a strict neutrality. But no European Government could be surprised or displeased that in such a cause our wishes should be in favor of the success of the colonies, or that we should treat as independent powers those amongst them which had in fact established their independence."

Mr. Gallatin, minister at Paris, to Mr. J. Q. Adams, Sec. of State, Nov. 5, 1818. 2 Gallatin's Writings, 75.

"But while this state of things continues, an entire equality of treatment of the parties is not possible. There are circumstances arising from the nature of the contest itself which produce unavoidable inequalities. Spain, for instance, is an acknowledged sovereign power,

and, as such, has ministers and other accredited and privileged agents to maintain her interest and support her rights conformably to the usages of nations. The South Americans, not being acknowledged as sovereign and independent states, cannot have the benefit of such officers. We consider it, however, as among the obligations of neutrality to obviate this inequality, as far as may be practicable, without taking a side, as if the question of the war was decided. We listen, therefore, to the representations of their deputies or agents, and do them justice as much as if they were formally accredited. By acknowledging the existence of a *civil war*, the right of Spain, as understood by herself, is no doubt, affected. She is no longer recognized as the sovereign of the provinces in revolution against her. Thus far neutrality itself operates against her, and not against the other party. This also is an inequality arising from the nature of the struggle, unavoidable, and therefore not incompatible with neutrality."

Mr. Adams, Sec. of State, to Mr. Rush, Jan. 1, 1819. MSS. Inst., Ministers.

The correspondence of the United States with Spain, Buenos Ayres, Chili, Colombia, and Mexico, relative to the independence of the Spanish-American states, is given in the Brit. and For. St. Pap. for 1821–'22, vol. 9, p. 369.

Papers relative to the political condition of Spanish South America are given in President Monroe's messages of Mar. 8 and Apr. 6, 1822, House Doc. No. 327, 17th Cong., 1st sess. 4 Am. St. Pap. (For. Rel.), 318.

"In every question relating to the independence of a nation two principles are involved, one of *right* and the other of *fact;* the former exclusively depending upon the determination of the nation itself, and the latter resulting from the successful execution of that determination. This right has been recently exercised as well by the Spanish nation in Europe as by several of those countries in the American hemisphere which had for two or three centuries been connected, as colonies, with Spain. In the conflicts which have attended these revolutions the United States have carefully abstained from taking any part, respecting the right of the nations concerned in them to maintain or reorganize their own political constitutions, and observing, wherever it was a contest by arms, a most impartial neutrality; but the civil war in which Spain was for some years involved with the inhabitants of her colonies in America has, in substance, ceased to exist. Treaties equivalent to an acknowledgment of independence have been concluded by the commanders and viceroys of Spain herself with the Republic of Colombia, with Mexico, and with Peru, while in the provinces of La Plata and in Chili no Spanish force has for several years existed to dispute the independence which the inhabitants of those countries had declared.

"Under these circumstances, the Government of the United States, far from consulting the dictates of a policy questionable in its morality, yielded to an obligation of duty of the highest order by recognizing as independent states nations which, after deliberately asserting their

right to that character, have maintained and established it against all the resistance which had been or could be brought to oppose it. This recognition is neither intended to invalidate any right of Spain, nor to affect the employment of any means which she may yet be disposed or enabled to use with the view of reuniting those provinces to the rest of her dominions. It is the mere acknowledgment of existing facts with the view to the regular establishment with the nations newly formed of those relations, political and commercial, which it is the moral obligation of civilized and Christian nations to entertain reciprocally with one another."

Mr. Adams, Sec. of State, to Mr. Anduaga, Apr. 6, 1822. MSS. For. Leg. Notes. That the recognition by the United States, in March, 1822, of the independence of the Spanish-American colonies was received with satisfaction in England, and was "not generally unfavorably received," see Mr. Gallatin, minister at Paris, to Mr. J. Q. Adams, Sec. of State, Apr. 26, 1822. 2 Gallatin's Writings, 240.

"Mr. Anduaga, I observe, casts in our teeth the postponement of the recognition of Spanish America till the cession of Florida was secured, and taking that step immediately after. This insinuation will be so readily embraced by suspicious minds, and particularly by the wily cabinets of Europe, that I cannot but think that it will be well to take away that pretext against us by an *exposé* brought before the public in some due form in which our conduct would be seen in its true light. An historical view of the early sentiments in favor of our neighbors expressed here, the successive steps openly taken manifesting our sympathy with their cause and our anticipation of its success, more especially our declaration of neutrality towards the contending parties as engaged in a civil, not an insurrectionary, war, would show to the world that we never concealed the principles that governed us, nor the policy which terminated in the decisive step last taken."

Mr. Madison to President Monroe, May 6, 1822. (Unofficial) Monroe Pap. MSS. Dept. of State. 3 Madison's Writings, 267.

When a sovereign has a reasonable hope of maintaining his authority over insurgents, the acknowledgment of the independence of such insurgents would be an international wrong. It is otherwise when such sovereign is manifestly disabled from maintaining the contest.

Mr. Adams, Sec. of State, to Mr. Anderson, May 27, 1823, in which letter is given a history of the action of the United States to the revolted colonies in South America, ending in their recognition. MSS. Inst., Ministers.

Mr. Salazar, the Minister from Colombia, stated lately, by order of his Government, that a French agent was expected at Bogota, having already arrived at the port, with power to treat with his Government respecting its independence. He observed that his Government had been advised, from an authentic source, that the Government of France would acknowledge its independence on one condition, the establishment of monarchy, and leave the person to be placed in that station, to the people of Colombia; that Bolivar would not be objected to if preferred

by them. He asked, should the proposition be rejected and France become hostile in consequence, what part the United States would take in that event. What aid might they expect from us? The subject will of course be weighed thoroughly in giving the answer. The Executive has no right to compromit the nation in any question of war, nor ought we to presume that the people of Colombia will hesitate as to the answer to be given to any proposition which touches so vitally their liberties.

President Monroe to Mr. Madison, Aug. 2, 1824. Madison MSS. Dept. of State.

"In considering that war (between Spain and her colonies), as in considering all others, we should look back upon the past, deliberately survey its present condition, and endeavor, if possible, to catch a view of what is to come. With respect to the first branch of the subject, it is, perhaps, of the least practical importance. No statesman can have contemplated the colonial relations of Europe and continental America without foreseeing that the time must come when they would cease. That time might have been retarded or accelerated, but come it must in the great march of human events. An attempt of the British Parliament to tax without their consent the former British colonies, now these United States, produced the war of our Revolution, and led to the establishment of that independence and freedom which we now so justly prize. Moderation and forbearance on the part of Great Britain might have postponed, but could not have prevented, our ultimate separation. The attempt of Bonaparte to subvert the ancient dynasty of Spain, and to place on its throne a member of his own family, no doubt hastened the independence of the Spanish colonies. If he had not been urged by his ambition to the conquest of the peninsula, those colonies, for a long time to come, might have continued quietly to submit to the parental sway. But they must have inevitably thrown it off, sooner or later. We may imagine that a vast continent, uninhabited or thinly peopled by a savage and untutored race, may be governed by a remote country, blessed with the lights and possessed of the power of civilization, but it is absurd to suppose that this same continent, in extent twenty times greater than that of the parent country, and doubling it in a population equally civilized, should not be able, when it chooses to make the effort, to cast off the distant authority. When the epoch of separation between a parent state and its colony, from whatever cause, arrives, the struggle for self-government on the one hand, and for the preservation of power on the other, produces mutual exasperation and leads to a most embittered and ferocious war. It is then that it becomes the duty of third powers to interpose their humane offices, and calm the passions and enlighten the counsels of the parties. And the necessity of their efforts is greatest with the parent country, whose pride and whose wealth and power, swelled by the colonial contributions, create

the most repugnance to an acquiescence in a severance which has been ordained by Providence."

Mr. Clay, Sec. of State, to Mr. Middleton, May 10, 1825. MSS. Inst., Ministers. Brit. and For. St. Pap. (1825–'26), vol. 13, p. 403.

The correspondence in 1826 with Spain, in respect to the independence of Spanish America will be found in the Brit. and For. St. Pap. for 1828–'29, vol. 16, 856. See also 2 Phill. Int. Law (3d ed.), 545; 5 J. Q. Adams's Mem., 488, 489, 491.

The following is from Mr. J. C. Bancroft Davis's notes to the Treaties of the United States:

"At the opening of the first session of the Twelfth Congress the House referred to a select committee the part of the President's message relating to the Spanish-American colonies. (1 Annals, 1st sess. 12th Cong., 335.) The committee on the 10th of December reported a joint resolution that 'the Senate and House of Representatives will unite with the Executive in establishing with them as foreign and independent states such amicable relations and commercial intercourse as may require their legislative authority.' (*Ibid.*, 428, and 3 F. R., F., 538.) A letter from Monroe, then Secretary of State, transmitting a copy of the declaration of independence of Venezuela, and saying that he had no information that any other of the Spanish provinces had entered into similar declarations, accompanied the resolution as reported by the committee. (*Ibid.*, 539.) The resolution was allowed to drop.

"On the 5th of December, 1817, the House requested the President to lay before it 'such information as he may possess and think proper to communicate relative to the independence and political condition of the provinces of Spanish-America. (1 Annals, 1st sess. 15th Cong., 406–8.) This appears to have been called out by the message of President Monroe on the 2d of December, in which he stated that persons claiming to act under the authority of some of the colonies had taken possession of Amelia Island, off the coast of Florida, and had made of the island a channel for the illicit introduction of slaves from Africa into the United States, an asylum for fugitive slaves from the neighboring states, and a port for smuggling of every kind. (*Ibid.*, 14.)

"Before the President replied to the resolution, the forces of the United States had occupied Amelia Island. Upon this 'Vincente Pazos, representing himself as the deputed agent of the authorities acting in the name of the Republics of Venezuela, New Granada, and Mexico,' presented to the House of Representatives, through the Speaker, on the 11th of March, 1818, a memorial complaining of that occupation. (Annals, 1st sess. 15th Cong., 1251.) An animated discussion immediately ensued. Forsyth said: 'The question then for the House to consider was whether, when the Constitution has placed the conduct of our foreign relations with the Executive, a foreign agent shall be permitted to appeal from the Executive to this House.' (*Ibid.*, 1262.) The House by a vote of 127 to 28 refused to receive the memorial. (*Ibid.*, 1268.) (As to Amelia Island, see *supra* § 50*a*.)

"The report of the Secretary of State, in reply to the resolution of the 5th of December, was transmitted to the House on the 25th of March, 1818. In the interval that had elapsed a wide discussion on Spanish-American affairs had taken place in the debates upon neutrality laws and other germane subjects. (4 F. R., F., 173.) From this report it appeared that the United Provinces of La Plata had applied to be recognized as independent states.

"Extraordinary pains were taken to secure accurate information respecting the widely-extended conflict going on between Spain and her colonies. A commission, consisting of Cæsar A. Rodney, John Graham, and Theodoric Bland, was sent to Buenos Ayres and Montevideo, with instructions to make full reports. They did so, and the political, social, commercial, and industrial information which was furnished respecting these countries remains in the public documents of the United States to attest the writer's fidelity, intelligence, and power of giving literary attraction to official reports. (4 F. R., F., 217–323.) A special report on the subject was also obtained from Poinsett. (*Ibid.*, 323.) The whole was transmitted to Congress by the President. The general result of these reports may be summed up thus: To the east of the Andes and south of Brazil the Government of the United Provinces of the Rio Plata (or of South America) claimed a federal jurisdiction over the whole territory, which was denied and successfully resisted by Paraguay and by the Banda Oriental, and a state of war existed between the United Provinces and the latter state. To the west of the Andes, Chili was in the possession of a dictator, with no representative government. (As to this mission, see *supra* § 47.)

"In the first session of the Fifteenth Congress two unsuccessful efforts were made in the House to secure an appropriation for a minister to the United Provinces. The last vote, taken on the 30th of March, 1818, was 45 yeas to 115 nays. (2 Annals, 1st sess. 15th Cong., 1655.)

"In the next session of Congress the House inquired of the President 'whether any application had been made by any of the independent governments in South America to have a minister or consul-general accredited by the Government of the United States.' (1 Annals, 2d sess. 15th Cong., 544.) The President replied that Don Limo de Clemente had applied to be received as the representative of the Republic of Venezuela, and that David C. De Forest, a citizen of the United States, had applied to be accredited as consul-general of the United Provinces of South America, and he inclosed the correspondence. (4 F. R., F., 412, 418. See also 2 Annals, 2d sess. 15th Cong., 911. For the diplomatic correspondence with Spain respecting this and other questions through this series of years, see 4 F. R., F., 422–626.)

"In his message to Congress at the opening of the first session of the next (the Sixteenth) Congress, President Monroe said: 'In the civil war existing between Spain and the Spanish provinces in this hemisphere the greatest care has been taken to enforce the laws intended to preserve an impartial neutrality. * * * The progress of the war, however, has operated * * * in favor of the colonies. Buenos Ayres still maintains unshaken the independence which it declared in 1816, and has enjoyed since 1810. Like success has also lately attended Chili, and the provinces north of the La Plata bordering on it, and likewise Venezuela. * * * Should it become manifest to the world that the efforts of Spain to subdue these provinces will be fruitless, it may be presumed that the Spanish Government itself will give up the contest. In producing such a determination, it cannot be doubted that the opinion of friendly powers, who have taken no part in this controversy, will have their merited influence.' (4 F. R., F., 628.)

"Mr. Clay moved, on the 4th of April, in this session, that it was expedient to provide by 'law a suitable outfit and salary for such minister or ministers as the President, by and with the advice and consent of the Senate, may send to any of the Governments of South America which have established and are maintaining their independence against

Spain.' (2 Annals, 1st sess., 16th Cong., 1781.) The motion was carried on the 10th of May, after debate, by a majority of five (*ibid.*, 2229), but nothing further was done. (*Ibid.*, note 2230.)

"In the second session of the Sixteenth Congress Mr. Clay resumed his efforts to secure a political recognition of the revolted states. He moved an appropriation for a mission (Annals, 2d sess. 16th Cong., 1071), but it was defeated. (*Ibid.*, 1077.) He then moved that the House 'participates with the people of the United States in the deep interest which they feel for the success of the Spanish provinces of South America, which are struggling to establish their liberty and independence, and that it will give its constitutional support to the President of the United States whenever he may deem it expedient to recogonize the sovereignty and independency of any of the said provinces.' (*Ibid.*, 1081.) After a debate a motion was carried. (*Ibid.*, 1091–1092.)

"At the opening of the next session of Congress the President said in his message: 'It is understood that the colonies in South America have had great success during the present year in the struggle for their independence. * * * It has long been manifest that it would be impossible for Spain to reduce these colonies by force, and equally so that no conditions short of their independence would be satisfactory to them. It may, therefore, be presumed, and it is earnestly hoped, that the Government of Spain, guided by enlightened and liberal counsels, will find it to comport with its interests, and due to its magnanimity, to terminate this exhausting controversy on that basis. To promote this result, by friendly counsel with the Government of Spain, will be the object of the Government of the United States.' (4 F. R., F., 739.)

"On the 30th of January, 1822, the House requested the President to lay before it communications from the agents of the United States in the revolted states, or from the agents of those states in the United States which might tend to show the political condition of those Governments, and the state of war between them and Spain. (1 Annals, 1st sess. 17th Cong., 825–828.) The President complied with the request in a message on the 8th of March, 1822 (*ibid.*, 1238), which message was also communicated to the Senate on the same day. (*Ibid.*, 284. See also 4 F. R., F., 818.)

"In this message the President says: 'This contest has now reached such a stage, and been attended with such decisive success on the part of the provinces, that it merits the most profound consideration whether their right to the rank of independent nations, with all the advantages incident to it in their intercourse with the United States, is not complete. Buenos Ayres assumed that rank by a formal declaration in 1816, and has enjoyed it since 1810. * * * The provinces composing the Republic of Colombia, after having separately declared their independence, were united by a fundamental law of the 17th of December, 1819. * * * Chili declared independence in 1818, and has since enjoyed it undisturbed, and of late, by the assistance of Chili and Buenos Ayres, the revolution has extended to Peru. Of the movement in Mexico, our information is less authentic, but it is, nevertheless, distinctly understood that the new Government has declared its independence, and that there is now no opposition to it there, nor a force to make it. * * * Thus it is manifest that all those provinces are not only in the full enjoyment of their independence, but, considering the state of the war and other circumstances, that there is not the most remote prospect of their being deprived of it. * * * Of the views of the Spanish Government on this subject, no particular information has been recently

received. * * * Nor has any authentic information been recently received of the disposition of other powers respecting it. A sincere desire has been cherished to act in concert with them in the proposed recognition. * * * In proposing this measure, it is not contemplated to change thereby, in the slightest manner, our friendly relations with either of the parties, but to observe in all respects, as heretofore, should the war be continued, the most perfect neutrality between them. (4 F. R., F., 819.)

"On the 4th of May, 1822, Congress passed 'An act making an appropriation to defray the expenses of missions to the independent nations on the American continent.' One hundred thousand dollars was the sum appropriated. (3 St. at L., 678.)

"In the message at the opening of the following session of Congress (December, 1823), President Monroe said: 'With the existing colonies or dependencies of any European power we have not interfered and shall not interfere, but with the Governments who have declared their independence and maintained it, and whose independence we have on great consideration and on just principles acknowledged, we could not view any interposition for the purpose of oppressing them, or controlling, in any other manner, their destiny, by any European power, in any other light than as the manifestation of an unfriendly disposition towards the United States.' (1 Annals, 1st sess. 18th Cong., 22, 23.)

"The general treaty of peace, amity, and commerce, concluded on the 3d day of October, 1824, between the United States and the Republic of Colombia (which then consisted of what was afterwards known as New Granada, of Venezuela, and of Ecuador) was the first of a long series of treaties with the new powers. (5 F. R., F., 696–729.)

"In the same year a convention for the suppression of the African slave-trade was negotiated with the Republic of Colombia, but was rejected by the Senate. (*Ibid.*, 729–735.)"

"As a representative in Congress in 1818, 1820, and 1822, he (Mr. Clay) had, indeed, taken the lead in urging on our Government the immediate recognition of the new South American states, then struggling bravely to establish and maintain their independence, and in assuring them of the warm sympathy of our own Republic, he was earlier than George Canning himself in 'calling them into being.' Richard Rush, in writing to him from London, in 1825, where he was then our minister, justly criticises the arrogant self-laudation of Mr. Canning on this subject, which Earl Grey had only ridiculed as a 'frivolous and empty boast,' and says: 'If Earl Grey had been better informed he would have said that it was you who did most to call them into being. * * * The South Americans owe to you more than to any man in either hemisphere their independence, you having led the way to our acknowledgment of it.' * * * Mr. Clay was then ready and resolved, on assuming the portfolio of Secretary of State, to enter into treaties with these new republics at the earliest moment, and Mr. Adams was no less resolved and ready for such a step."

Mr. Winthrop's address on Mr. Clay, 4 Winthrop's Addresses, &c., 47.

"Whilst the President, however, is thus anxious to prevent all officious intermeddling in the internal political affairs of other countries by our diplomatic functionaries, he does not regard it as inconsistent with the observance of that salutary rule that you should, on proper applica-

tion, and upon suitable occasions, communicate freely and frankly the nature and operation of our political institutions, and so far as correct principles of public policy can be aided by such means it is his wish that they should be employed. Your business is solely with the actual government of the country where you are to reside, and you should sedulously endeavor, by a frank and courteous deportment, to conciliate its esteem and secure its confidence. So far as we are concerned, that which is the Government *de facto* is equally so *de jure*. Should any change in the Government of Colombia take place, rendering your credentials inapplicable, you will be at no loss for the proper explanation; and should the new Government refuse to receive you without others, in another form, you will, of course, transmit the earliest notice of the circumstance to this Department that what is wanting may be supplied. In the mean time it may be expected that informal communications will enable you to pursue with due effect the objects claiming your attention."

Mr. Van Buren, Sec. of State, to Mr. Moore, June 9, 1829. MSS. Inst., Am. St.
As to the recognition, in 1828, by the Government at Washington, of the chargé d'affaires sent by Don Miguel, as King of Portugal, see instructions of Mr Van Buren, Sec. of State, to Mr. Tudor, Sept. 4, 1829. MSS. Inst., Am. St.

"It has been the principle and the invariable practice of the United States to recognize that as the legal Government of another nation which by its establishment in the actual exercise of political power might be supposed to have received the express or implied assent of the people."

Mr. Livingston, Sec. of State, to Sir Charles Vaughan, Apr. 30, 1833. MSS. For. Leg. Notes.

In a report made June 18, 1836, by Mr. Clay, from the Senate Committee on Foreign Relations, in respect to the recognition of the independence of Texas (Senate Doc. 406, 24th Cong., 1st sess.), are the following passages:

"The right of one independent power to recognize the fact of the existence of a new power about to assume a position among the nations of the earth is incontestable. It is founded upon another right, that which appertains to every sovereignty, to take care of its own interests by establishing and cultivating such commercial or other relations with the new power as may be deemed expedient. Its exercise gives no just ground of umbrage or cause of war. The policy which has hitherto guided the Government of the United States in respect to new powers, has been to act on the fact of their existence, without regard to their origin, whether that has been by the subversion of a pre-existing Government, or by the violent or voluntary separation of one from another part of a common nation. In cases where an old and established nation has thought proper to change the form of its Government, the United States, conforming to the rule which has ever governed their conduct, of strictly abstaining from all interference with the domestic concerns of other states, have not stopped to inquire whether the new Government has been rightfully adopted or not. It has been sufficient for them that it is, in fact, the Government of the country, in practical operation.

There is, however, a marked difference in the instances of an old nation which has altered the form of its Government, and a newly organized power which has just sprung into existence. In the former case (such, for example, as was that of France) the nation had existed for ages as a separate and independent community. It is a matter of history, and the recognition of its new Governments was not necessary to denote the existence of the nation; but, with respect to new powers, the recognition of their Governments comprehends, first, an acknowledgment of their ability to exist as independent states, and secondly, the capacity of their particular Governments to perform the duties and fulfill the obligations towards foreign powers incident to their new condition. Hence, more caution and deliberation are necessary in considering and determining the question of the acknowledgment of a new power than that of the new Government of an old power.

"The Government of the United States has taken no part in the contest which has unhappily existed between Texas and Mexico. It has avowed its intention, and taken measures to maintain a strict neutrality towards the belligerents. If individual citizens of the United States, impelled by sympathy for those who were believed to be struggling for liberty and independence against oppression and tyranny, have engaged in the contest, it has been without the authority of their Government. On the contrary, the laws which have been hitherto found necessary or expedient to prevent citizens of the United States from taking part in foreign wars have been directed to be enforced. * * *

"The recognition of Texas as an independent power may be made by the United States in various ways: First, by treaty; second, by the passage of a law regulating commercial intercourse between the two powers; third, by sending a diplomatic agent to Texas with the usual credentials; or, lastly, by the Executive receiving and accrediting a diplomatic representative from Texas, which would be a recognition as far as the Executive only is competent to make it. In the first and third modes the concurrence of the Senate in its executive character would be necessary, and in the second in its legislative character.

"The Senate alone, without the co-operation of some other branch of the Government, is not competent to recognize the existence of any power.

"The President of the United States, by the Constitution, has the charge of their foreign intercourse. Regularly he ought to take the initiative in the acknowledgment of the independence of any new power, but in this case he has not yet done it, for reasons which he, without doubt, deems sufficient. If in any instance the President should be tardy, he may be quickened in the exercise of his power by the expression of the opinion, or by other acts, of one or both branches of Congress, as was done in relation to the Republics formed out of Spanish America. But the committee do not think that on this occasion any tardiness is justly imputable to the Executive. About three months only have elapsed since the establishment of an independent Government in Texas, and it is not unreasonable to wait a short time to see what its operation will be, and especially whether it will afford those guarantees which foreign powers have a right to expect before they institute relations with it.

"Taking this view of the whole matter, the committee conclude by recommending to the Senate the adoption of the following resolution:

"'*Resolved*, That the independence of Texas ought to be acknowledged by the United States whenever satisfactory information shall be

received that it has in successful operation a civil Government, capable of performing the duties and fulfilling the obligations of an independent power.'"

"No steps have been taken by the Executive towards the acknowledgment of the independence of Texas, and the whole subject would have been left without further remark on the information now given to Congress, were it not that the two houses at their last session, acting separately, passed resolutions 'that the independence of Texas ought to be acknowledged by the United States whenever satisfactory information should be received that it had in successful operation a civil Government capable of performing the duties and fulfilling the obligations of an independent power.' This mark of interest in the question of the independence of Texas, and indication of the views of Congress, make it proper that I should somewhat in detail present the considerations that have governed the Executive in continuing to occupy the ground previously taken in the contest between Mexico and Texas.

"The acknowledgment of a new state as independent, and entitled to a place in the family of nations, is at all times an act of great delicacy and responsibility, but more especially so when such state has forcibly separated itself from another of which it had formed an integral part, and which still claims dominion over it. A premature recognition under these circumstances, if not looked upon as justifiable cause of war, is always liable to be regarded as a proof of an unfriendly spirit to one of the contending parties. All questions relative to the government of foreign nations, whether of the Old or New World, have been treated by the United States as questions of fact only, and our predecessors have cautiously abstained from deciding upon them until the clearest evidence was in their possession to enable them not only to decide correctly, but to shield their decisions from every unworthy imputation. In all the contests that have arisen out of the revolutions of France, out of the disputes relating to the Crowns of Portugal and Spain, out of the separation of the American possessions of both from the European Governments, and out of the numerous and constantly-occurring struggles for dominion in Spanish America, so wisely consistent with our just principles has been the action of our Government that we have, under the most critical circumstances, avoided all censure, and encountered no other evil than that produced by a transient estrangement of good-will in those against whom we have been by force of evidence compelled to decide.

"It has thus made known to the world that the uniform policy and practice of the United States is to avoid all interference in disputes which merely relate to the internal government of other nations, and eventually to recognize the authority of the prevailing party without reference to our particular interests and views or to the merits of the original controversy. Public opinion here is so firmly established and

well understood in favor of this policy that no serious disagreement has ever risen among ourselves in relation to it, although brought under view in a variety of forms, and at periods when the minds of the people were greatly excited by the agitation of topics purely domestic in their character. Nor has any deliberate inquiry ever been instituted in Congress, or in any of our legislative bodies, as to whom belonged the power of originally recognizing a new state. A power the exercise of which is equivalent, under some circumstances, to a declaration of war; a power nowhere especially delegated, and only granted in the Constitution as it is necessarily involved in some of the great powers given to Congress—in that given to the President and Senate to form treaties with foreign powers, and to appoint embassadors and other public ministers, and in that conferred upon the President to receive ministers from foreign nations.

"In the preamble to the resolution of the House of Representatives, it is distinctly intimated that the expediency of recognizing the independence of Texas should be left to the decision of Congress. In this view, on the ground of expediency, I am disposed to concur; and do not, therefore, consider it necessary to express any opinion as to the strict constitutional right of the Executive, either apart from, or in conjunction with the Senate, over the subject. It is to be presumed that on no future occasion will a dispute arise, as none has heretofore occurred, between the Executive and the legislature in the exercise of the power of recognition. It will always be considered consistent with the spirit of the Constitution, and most safe, that it should be exercised, when probably leading to war, with a previous understanding with that body by whom war can alone be declared, and by whom all the provisions for sustaining its perils must be furnished. Its submission to Congress, which represents in one of its branches the States of the Union, and in the other, the people of the United States, where there may be reasonable ground to apprehend so grave a consequence, would certainly afford the fullest satisfaction to our own country, and a perfect guarantee to all other nations, of the justice and prudence of the measures which might be adopted.

"In making these suggestions, it is not my purpose to relieve myself from the responsibilty of expressing my own opinions of the course the interests of our country prescribe, and its honor permits us to follow.

"It is scarcely to be imagined that a question of this character could be presented, in relation to which it would be more difficult for the United States to avoid exciting the suspicion and jealousy of other powers, and maintain their established character for fair and impartial dealing. But on this, as on every other trying occasion, safety is to be found in a rigid adherence to principle.

"In the contest between Spain and the revolted colonies we stood aloof, and waited not only until the ability of the new states to protect themselves was fully established, but until the danger of their being

again subjugated had entirely passed away. Then, and not until then, were they recognized. Such was our course in regard to Mexico herself. The same policy was observed in all the disputes growing out of the separation into distinct Governments of those Spanish-American states, who began or carried on the contest with the parent country, united under one form of government. We acknowledged the separate independence of New Grenada, of Venezuela, and of Ecuador, only after their independent existence was no longer a subject of dispute, or was actually acquiesced in by those with whom they had been previously united. It is true that with regard to Texas the civil authority of Mexico has been expelled, its invading army defeated, the chief of the Republic himself captured, and all present power to control the newly-organized Government of Texas annihilated within its confines. But, on the other hand, there is, in appearance at least, an immense disparity of physical force on the side of Texas. The Mexican Republic, under another Executive, is rallying its forces under a new leader, and menacing a fresh invasion to recover its lost dominion.

"Upon the issue of this threatened invasion, the independence of Texas may be considered as suspended; and were there nothing peculiar in the relative situation of the United States and Texas, our acknowledgment of its independence at such a crisis could scarcely be regarded as consistent with that prudent reserve with which we have hitherto held ourselves bound to treat all similar questions. But there are circumstances in the relations of the two countries which require us to act on this occasion with even more than our wonted caution. Texas was once claimed as a part of our property, and there are those among our citizens who, always reluctant to abandon that claim, cannot but regard with solicitude the prospects of the reunion of the territory to this country. A large portion of its civilized inhabitants are emigrants from the United States, speak the same language with ourselves, cherish the same principles, political and religious, and are bound to many of our citizens by ties of friendship and kindred blood; and, more than all, it is known that the people of that country have instituted the same form of government with our own, and have, since the close of your last session, openly resolved, on the acknowledgment by us of their independence, to seek admission into the Union as one of the Federal States. This last circumstance is a matter of peculiar delicacy, and forces upon us considerations of the gravest character. The title of Texas to the territory she claims is identified with her independence; she asks us to acknowledge that title to the territory, with an avowed design to treat immediately of its transfer to the United States. It becomes us to beware of a too early movement, as it might subject us, however unjustly, to the imputation of seeking to establish the claim of our neighbors to a territory, with a view to its subsequent acquisition by ourselves. Prudence, therefore, seems to dictate that we should

still stand aloof, and maintain our present attitude, if not until Mexico itself, or one of the great foreign powers, shall recognize the independence of the new Government, at least until the lapse of time or the course of events shall have proved beyond cavil or dispute the ability of the people of that country to maintain their separate sovereignty and to uphold the Government constituted by them. Neither of the contending parties can justly complain of this course. By pursuing it, we are but carrying out the long-established policy of our Government, a policy which has secured to us respect and influence abroad and inspired confidence at home."

President Jackson, Texas message, Dec. 21, 1836.

"The independence of other nations has always been regarded by the United States as a question of fact merely, and that of every people has been invariably recognized by them whenever the actual enjoyment of it was accompanied by satisfactory evidence of their power and determination permanently and effectually to maintain it. This was the course pursued by the United States in acknowledging the independence of Mexico and the other American states, formerly under the dominion of Spain. The United States, in recognizing Texas, acted in perfect accordance with their ordinary and settled policy. That act, however, did not proceed from any unfriendly spirit towards Mexico and must not be regarded as indicative of a disposition to interfere in the contest between her and Texas."

Mr. Forsyth, Sec. of State, to Mr. Castillo, Mar. 17, 1837. MSS. Notes, Mex.

The action of the United States in 1837, relative to the recognition of Texan independence, is detailed by Sir W. Harcourt (Historicus, 19) as a precedent sustaining the position assumed by him, "that recognition is not permissible until the contest is won." At the time of the recognition by the United States, no *bona fide* contest was going on between the insurgent province and its former sovereign.

As to annexation of Texas, see *infra*, § 72.

"Near eight years have elapsed since Texas declared her independence. During all that time, Mexico has asserted her right of jurisdiction and dominion over that country, and has endeavored to enforce it by arms. Texas has successfully resisted all such attempts, and has thus afforded ample proofs of her ability to maintain her independence. This proof has been so satisfactory to many of the most considerable nations of the world, that they have formally acknowledged the independence of Texas and established diplomatic relations with her. Among those nations the United States are included, and, indeed, they set the example which other nations have followed. Under these circumstances the United States regard Texas as in all respects an independent nation, fully competent to manage its own affairs and possessing all the rights of other independent nations. The Government of the United States, therefore,

will not consider it necessary to consult any other nation in its transactions with the Government of Texas."

Mr. Upshur, Sec. of State, to Mr. Almonte, Dec. 1, 1843. MSS. Notes, Mex.

"It was right and proper that the envoy extraordinary and minister plenipotentiary from the United States should be the first to recognize, so far as his powers extended, the provisional Government of the French Republic. Indeed, had the representative of any other nation preceded you in this good work, it would have been regretted by the President."

Mr. Buchanan, Sec. of State, to Mr. Rush, Mar. 31, 1848. MSS. Inst., France.

"In its intercourse with foreign nations the Government of the United States has, from its origin, always recognized *de facto* Governments. We recognize the right of all nations to create and re-form their political institutions according to their own will and pleasure. We do not go behind the existing Government to involve ourselves in the question of legitimacy. It is sufficient for us to know that a Government exists capable of maintaining itself; and then its recognition on our part inevitably follows. This principle of action, resulting from our sacred regard for the independence of nations, has occasioned some strange anomalies in our history. The Pope, the Emperor of Russia, and President Jackson were the only authorities on earth which ever recognized Dom Miguel as King of Portugal.

"Whilst this is our settled policy, it does not follow that we can ever be indifferent spectators to the progress of liberty throughout the world, and especially in France. We can never forget the obligations which we owe to that generous nation for their aid at the darkest period of our Revolutionary war in achieving our own independence. These obligations have been transmitted from father to son, from generation to generation, and are still gratefully remembered. They yet live freshly in the hearts of our countrymen. It was, therefore, with one universal burst of enthusiasm that the American people hailed the late glorious revolution in France in favor of liberty and republican government. In this feeling the President strongly sympathizes. Warm aspirations for the success of the new Republic are breathed from every heart. Liberty and order will make France happy and prosperous. Her destinies, under Providence, are now in the hands of the French people. Let them by their wisdom, firmness, and moderation refute the slanders of their enemies, and convince the world that they are capable of self-government."

Mr. Buchanan, Sec. of State, to Mr. Rush, Mar. 31, 1848, MSS. Inst., France.

"The prompt recognition of the new Government by the representative of the United States at the French court, meets my full and unqualified approbation, and he has been authorized in a suitable manner to make known this fact to the constituted authorities of the French

Republic. Called upon to act upon a sudden emergency, which could not have been anticipated by his instructions, he judged rightly of the feelings and sentiments of his Government and of his countrymen, when, in advance of the diplomatic representatives of other countries, he was the first to recognize, so far as it was in his power, the free Government established by the French people.

"The policy of the United States has ever been that of non-intervention in the domestic affairs of other countries, leaving to each to establish the form of government of its own choice. While this wise policy will be maintained toward France, now suddenly transformed from a Monarchy into a Republic, all our sympathies are naturally enlisted on the side of a great people, who, imitating our example, have resolved to be free. That such sympathy should exist on the part of the people of the United States with the friends of free government in every part of the world, and especially in France, is not remarkable. We can never forget that France was our early friend in our eventful Revolution, and generously aided us in shaking off a foreign yoke and becoming a free and independent people."

President Polk, Special Message, Apr. 3, 1848.

Correspondence in 1849 between Mr. Buchanan, Sec. of State, and Mr. Rush, minister at Paris, with regard to the French revolution of 1848, will be found in Sen. Ex. Doc. No. 53, 30th Cong., 1st sess.

As to delay in recognizing the provisional republican Government of Rome in 1849, see Mr. Clayton, Sec. of State, to Mr. Cass, June 25, 1849. MSS. Inst., Papal States.

"We, as a nation, have ever been ready, and willing, to recognize any Government, *de facto*, which appeared capable of maintaining its power; and should either a republican form of government, or that of a limited monarchy (founded on a popular and permanent basis) be adopted by any of the states of Germany, we are bound to be the first, if possible, to hail the birth of the new Government, and to cheer it in every progressive movement that has for its aim the attainment of the priceless and countless blessings of freedom."

Mr. Clayton, Sec. of State, to Mr. Donelson, July 8, 1849. MSS. Inst., Prussia.

As to *de facto* governments, see *supra* § 7.

"My purpose, as freely avowed in this correspondence, was to have acknowledged the independence of Hungary had she succeeded in establishing a Government *de facto* on a basis sufficiently permanent in its character to have justified me in doing so, according to the usages and settled principles of this Government; and although she is now fallen, and many of her gallant patriots are in exile or in chains, I am free still to declare, that had she been successful in the maintenance of such a Government as we could have recognized, we should have been the first to welcome her into the family of nations."

President Taylor, Special Message, Mar. 28, 1850.

"In the course of the year 1848, and the early part of 1849, a considerable number of Hungarians came to the United States. Among them were individuals representing themselves to be in the confidence of the revolutionary Government, and by these persons the President was strongly urged to recognize the existence of that Government. In these applications, and in the manner in which they were viewed by the President, there was nothing unusual; still less was there anything unauthorized by the law of nations. It is the right of every independent state to enter into friendly relations with every other independent state. Of course, questions of prudence naturally arise in reference to new states brought by successful revolutions into the family of nations; but it is not to be required of neutral powers that they should await the recognition of the new Government by the parent state. No principle of public law has been more frequently acted upon, within the last thirty years, by the great powers of the world than this. Within that period eight or ten new states have established independent Governments within the limits of the colonial dominions of Spain on this continent; and in Europe the same thing has been done by Belgium and Greece. The existence of all these Governments was recognized by some of the leading powers of Europe, as well as by the United States, before it was acknowledged by the states from which they had separated themselves.

"If, therefore, the United States had gone so far as formally to acknowledge the independence of Hungary, although, as the event has proved, it would have been a precipitate step, and one from which no benefit would have resulted to either party, it would not, nevertheless, have been an act against the law of nations, provided they took no part in her contest with Austria."

Mr. Webster, Sec. of State, to Mr. Hülsemann, Dec. 21, 1850. MSS. Notes, Germ. St. See as to Mann's agency *supra*, § 47, where this note of Mr. Webster is given in full; as to the threat that such agents are "spies," *infra*, § 347*a*.

The correspondence in respect to the French *coup d'état* of December, 1851, is given in Senate Ex. Doc. No. 19, 32d Cong., 1st sess.; House Ex. Doc. No. 34, 32d Cong., 1st sess.; Senate Ex. Doc. No. 7, special sess., 1853.

"The Government of Peru does not deny, but on the contrary admits, that adequate provision has been made by law against getting up and fitting out within the United States such expeditions as it complains of, and that the Federal authorities have been vigilant in enforcing that law. It does not impute blame to this Government for the expedition of Walker and his associates to Nicaragua, but the sole ground of complaint is the recognition as a Government of the political power established in Nicaragua since Walker and his associates went to that country. The United States regretted as much as Peru could do the unhappy political dissensions which prevailed for a long time in that State, and the disastrous consequences which have resulted from

them. One political party, for the purpose of obtaining advantage over another, sought foreign aid, and invited Walker, with his associates, to join its ranks. The invitation was accepted. So long as there was a contest for power, so long as any question could be raised as to the persons in whose hands the Government, actual or *de facto*, had fallen, this Government did nothing which could afford any pretense for complaint to any party in the State of Nicaragua, or to any foreign power."

Mr. Marcy, Sec. of State, to Mr. Osma, Sept. 24, 1856. MSS. Notes, Peru.

When it is uncertain which of two titular Executives is in possession of the civil authority of a foreign state, diplomatic representatives from neither will be received.

Mr. Marcy, Sec. of State, to Mr. Irisarvi, Oct. 28, 1856. MSS. Notes, Cent. Am.

To sustain the recognition by the United States of a Mexican Government after civil war, it is not necessary that such Government should be in possession of the city of Mexico. It is enough if it be "obeyed by a large majority of the country, and is likely to continue."

Mr. Cass, Sec. of State, to Mr. McLane, Mar. 7, 1859. MSS. Inst., Mex. Same to same, May 25, 1859.

In Mr. Buchanan's view of his administration, published in 1866, a narrative is given of the events which preceded the recognition of Juarez, pp. 270 *ff*; and see *supra*, § 58.

"You are, of course, aware that the election of last November resulted in the choice of Mr. Abraham Lincoln; that he was the candidate of the Republican or Antislavery party; that the preceding discussion had been confined almost entirely to topics connected, directly or indirectly, with the subject of negro slavery; that every Northern State cast its whole electoral vote (except three in New Jersey) for Mr. Lincoln, while in the whole South the popular sentiment against him was almost absolutely universal. Some of the Southern States, immediately after the election, took measures for separating themselves from the Union, and others soon followed their example. Conventions have been called in South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, and Texas, and those conventions, in all except the last-named State, have passed ordinances declaring their secession from the Federal Government. A Congress, composed of representatives from the six first-named States, has been assembled for some time at Montgomery, Ala. By this body a provisional constitution has been framed for what it styles the 'Confederated States of America.'

"It is not improbable that persons claiming to represent the States which have thus attempted to throw off their Federal obligations will seek a recognition of their independence by the Emperor of Russia. In the event of such an effort being made, you are expected by the President to use such means as may in your judgment be proper and necessary to prevent its success.

"The reasons set forth in the President's message at the opening of

the present session of Congress in support of his opinion that the States have no constitutional power to secede from the Union, are still unanswered, and are believed to be unanswerable. The grounds upon which they have attempted to justify the revolutionary act of severing the bonds which connect them with their sister States are regarded as wholly insufficient. This Government has not relinquished its constitutional jurisdiction within the territory of those States, and does not desire to do so.

"It must be very evident that it is the right of this Government to ask of all foreign powers that the latter shall take no steps which may tend to encourage the revolutionary movement of the seceding States, or increase the danger of disaffection in those which still remain loyal. The President feels assured that the Government of the Emperor will not do anything in these affairs inconsistent with the friendship which this Government has always heretofore experienced from him and his ancestors. If the independence of the 'Confederated States' should be acknowledged by the great powers of Europe, it would tend to disturb the friendly relations, diplomatic and commercial, now existing between those powers and the United States. All these are consequences which the court of the Emperor will not fail to see are adverse to the interests of Russia, as well as to those of this country.

"Your particular knowledge of our political institutions will enable you to explain satisfactorily the causes of our present domestic troubles, and the grounds of the hope still entertained that entire harmony will soon be restored.

Mr. Black, Sec. of State, circular to U. S. ministers abroad, Feb. 28, 1861. MS. Inst., Russia; Dip. Corr., 1861.

"My predecessor, in his dispatch, No. 10, addressed to you on the 28th of February last, instructed you to use all proper and necessary measures to prevent the success of efforts which may be made by persons claiming to represent those States of this Union in whose name a provisional Government has been announced, to procure a recognition of their independence by the Government of Spain.

"I am now instructed by the President of the United States to inform you that, having assumed the administration of the Government in pursuance of an unquestioned election and of the directions of the Constitution, he renews the injunction which I have mentioned, and relies upon the exercise of the greatest possible diligence and fidelity on your part to counteract and prevent the designs of those who would invoke foreign intervention to embarrass or overthrow the Republic.

"When you reflect on the novelty of such designs, their unpatriotic and revolutionary character, and the long train of evils which must follow directly or consequentially from even their partial or temporary success, the President feels assured that you will justly appreciate and cordially approve the caution which prompts this communication.

"I transmit herewith a copy of the address pronounced by the President on taking the constitutional oath of office. It sets forth clearly the errors of the misguided partisans who are seeking to dismember the Union, the grounds on which the conduct of those partisans is disallowed, and also the general policy which the Government will pursue with a view to the preservation of domestic peace and order, and the maintenance and preservation of the Federal Union.

"You will lose no time in submitting this address to the Spanish minister of foreign affairs, and in assuring him that the President of the United States entertains a full confidence in the speedy restoration of the harmony and unity of the Government by a firm, yet just and liberal bearing, co-operating with the deliberate and loyal action of the American people.

"The United States have had too many assurances and manifestations of the friendship and good-will of Her Catholic Majesty to entertain any doubt that these considerations, and such others as your large experience of the working of our Federal system will suggest, will have their just influence with her, and will prevent Her Majesty's Government from yielding to solicitations to intervene in any unfriendly way in the domestic concerns of our country."

Mr. Seward, Sec. of State, circular, *mutatis mutandis*, to U. S. ministers abroad, Mar. 9, 1861. MSS. Inst., Spain; Dip. Corr., 1861.

"To recognize the independence of a new state, and so favor, possibly determine, its admission into the family of nations, is the highest possible exercise of sovereign power, because it affects in any case the welfare of two nations, and often the peace of the world. In the European system this power is now seldom attempted to be execised without invoking a consultation or congress of nations. That system has not been extended to this continent. But there is even a greater necessity for prudence in such cases in regard to American states than in regard to the nations of Europe. A revolutionary change of dynasty, or even a disorganization and recombination of one or many states, therefore, do not long or deeply affect the general interest of society, because the ways of trade and habits of society remain the same. But a radical change effected in the political combinations existing on the continent, followed, as it probably would be, by moral convulsions of incalculable magnitude, would threaten the stability of society throughout the world.

"Humanity has, indeed, little to hope for if it shall, in this age of high improvement, be decided without a trial that the principle of international law which regards nations as moral persons, bound so to act as to do to each other the least injury and the most good, is merely an abstraction too refined to be reduced into practice by the enlightened nations of western Europe. Seen in the light of this principle, the several nations of the earth constitute one great Federal Republic.

When one of them casts its suffrages for the admission of a new member into that Republic, it ought to act under a profound sense of moral obligation, and be governed by considerations as pure, disinterested, and elevated as the general interest of society and the advancement of human nature.

"The British Empire itself is an aggregation of divers communities which cover a large portion of the earth and embrace one-fifth of its entire population. Some, at least, of these communities are held to their places in that system by bonds as fragile as the obligations of our own Federal Union. The strain will some time come which is to try the strength of these bonds, though it will be of a different kind from that which is trying the cords of our confederation. Would it be wise for Her Majesty's Government, on this occasion, to set a dangerous precedent or provoke retaliation? If Scotland and Ireland are at last reduced to quiet contentment, has Great Britain no dependency, island, or province left exposed along the whole circle of her Empire, from Gibraltar through the West Indies and Canada till it begins again on the southern extremity of Africa?"

Mr. Seward, Sec. of State, to Mr. Adams, Apr. 10, 1861. MSS. Inst., Gr. Brit.; Dip. Corr., 1861.

Sir G. C. Lewis "is supposed to have maintained that England would not be entitled to recognize the Southern Confederacy until the Federalists had previously done so. But the secretary of war is far too accurate a thinker and speaker to have laid down any such doctrine. The rule he propounded was precisely that acted on by Mr. Canning in the case of the South American Republics, viz, that where a doubtful and *bona fide* struggle for supremacy is still maintained by the sovereign power, the insurgents *jam flagrante bello* cannot be said to have established a *de facto* independence."

Historicus, 8.

A revolutionary Government is not to be recognized until it is established by the great body of the population of the state it claims to govern.

Mr. Seward, Sec. of State, to Mr. Culver, Nov. 19, 1862. MSS. Inst., Venez. See same to same, Feb. 11, 1864; Mar. 21, 1864.

"This Government has, and it must insist on, the right to determine for itself when new authorities, established in a foreign state, can claim from it a formal recognition of them as an established power. The regulation of the exercise of that right upon principles of justice and according to facts established, with an absence of all favor and caprice, is hardly more important to the universal interests of society than it is to those of the United States themselves.

"This Government has, at the same time under the law of nations and by treaty, a clear right to have its properly appointed agents residing in Venezuela, although the authorities with which it has heretofore treated have been subverted, more or less completely, and to communi-

cate with the new authorities upon international matters affecting either the Government of the United States or its citizens. During the period, which, in case of any domestic revolution, may be either short or long, the agents of this Government have a right to confer upon such matters with the actual authorities who are conducting the affairs of Venezuela, and while the agent is bound to avoid all interference in the domestic questions of that state, he is entitled to be heard as the representative of the United States, without a previous recognition of the existing authorities, in place of those which have been either more or less effectually supplanted."

Mr. Seward, Sec. of State, to Mr. Culver, Mar. 9, 1863. MSS. Inst., Venez.

The Government of the United States, in 1864, while recognizing the Government of Juarez as the rightful Government of Mexico, at the same time recognized both parties to the civil war there raging as belligerents.

Mr. Seward, Sec. of State, to Mr. Geofroy, Apr. 6, 1864. MSS. Notes, France. See *supra*, § 58.

Reception in 1865 by the Government of the United States of commercial agents representing the Imperial Government of Mexico, then possessing some of the chief ports of Mexico, is not to be regarded as a recognition of the Imperial Government, though such agents were permitted in the ports to which they were sent to attest invoices and manifests.

Mr. Seward, Sec. of State, to Mr. Romero, Aug. 9, 1865. MSS. Notes, Mex.
As to Mexican revolutions, see *supra*, § 58.
As to informal reception of agents from unrecognized states, see *supra*, § 69.
For an account of the intervention of Napoleon III in Mexico, see 1 Phillimore Int. Law (3 ed.), 607. The author criticises the action of the United States in refusing to acknowledge the *de facto* sovereignty of Maximilian. See also 2 *ibid.*, 25. See, however, 1 Calvo droit int. (3 ed.), 300.

When there are two rival titular Governments contesting the sovereignty of a South American state, the Government of the United States will not, in cases of doubt, determine as to the title of either, but will wait the course of events.

Mr. Seward, Sec. of State, to Mr. Brazael, Aug. 27, 1868. MSS. Notes, Venez.

"Your dispatches of the 10th of November, Nos. 5 and 6, have been received. In your No. 5 you announce that a revolution has taken place in Costa Rica, which was effected by the mere display of military force, unresisted, and without the effusion of blood. You further announce that in that movement the President, Señor Castro, was deposed, and the first provisional substitute, Señor Jimenez, had assumed the executive power. The further transactions mentioned are an acquiescence of the several provinces, the suspension of the constitution, and the call of a national convention to adopt a new constitution. As a cor

sequence of these events, you have recognized the new President, subject to directions on the occasion from the President of the United States.

"It does not belong to the Government or people of the United States to examine the causes which have led to this revolution, or to pronounce upon the exigency which they created. Nevertheless, great as that exigency may have been, the subversion of a free republican constitution, only nine years old, by military force, in a sister American Republic, cannot but be an occasion of regret and apprehension to the friends of the system of republican government, not only here, but throughout the world.

"It only remains to say that the course which you have pursued is approved, insomuch as it appears that there is not only no civil war, but no Government contending with the one which has been established."

Mr. Seward, Sec. of State, to Mr. Blair, Dec. 1, 1868. MSS. Inst., Costa Rica. Dip. Corr., 1868.

The circumstances attending the recognition, on September 7, 1870, of the "National Defense Committee" of France as the "Government of France" are given in the documents accompanying President Hayes's special message of February 6, 1878. On September 7 Mr. Washburne sent to Mr. Favre (who, upon the change of government a few days before was appointed minister of foreign affairs) a letter containing the following: "It affords me great pleasure to advise you that I have this morning received a telegraphic dispatch from my Government instructing me to recognize the Government of the National Defense as the Government of France." On September 8 Mr. Favre replied in a letter beginning as follows: "I look upon it as a happy augury for the French Republic that it has received as its first diplomatic support the recognition of the Government of the United States."

"The regular Government of France, constituted by the will of the people as expressed through the National Assembly at Bordeaux, having been driven from Paris by the insurrectionary movement and established itself at Versailles, I deem it my duty to follow that Government, and shall, therefore, on to-morrow or the next day, remove thither with the legation, leaving one of the secretaries in charge here. Every member of the diplomatic corps will also leave."

Mr. Washburne to Mr. Fish, Mar. 19, 1871. MSS. Dispatches, France.

"As soon as I learned that a Republic had been proclaimed at Paris, and that the people of France had acquiesced in the change, the minister of the United States was directed by telegraph to recognize it, and to tender my congratulations and those of the people of the United States. The re-establishment in France of a system of government disconnected with the dynastic traditions of Europe appeared to be a proper subject for the felicitations of Americans. Should the present struggle result in attaching the hearts of the French to our simpler forms of representative government, it will be a subject of still further

satisfaction to our people. While we make no effort to impose our institutions upon the inhabitants of other countries, and while we adhere to our traditional neutrality in civil contests elsewhere, we cannot be indifferent to the spread of American political ideas in a great and highly civilized country like France."

President Grant, Second Annual Message, 1870.

"Referring to your note No. 195, concerning the election of the Duke of Aosta as King of Spain, I have to say that on the 19th of November Mr. Roberts called to officially inform me of that fact. I received the information without an intimation of the course that will be pursued by his Government. It has been the policy of the United States to recognize the Governments *de facto* of the countries with which we hold diplomatic relations. Such was our course when the Republic was established in France in 1848, and again in 1870, and in each case accepted by the French people. Such was our course in Mexico when the Republic was maintained by the people of that country in spite of foreign efforts to establish a monarchy by military force. We have always accepted the general acquiescence of the people in a political change of government as a conclusive evidence of the will of the nation. When, however, there has not been such acquiescence, and armed resistance has been shown to changes made or attempted to be made under the form of law, the United States have applied to other nations the rule that the organization which has possession of the national archives and of the traditions of Government, and which has been inducted to power under the forms of law, must be presumed to be the exponent of the desires of the people until a rival political organization shall have established the contrary. Your course in the present case will be governed by this rule.

"Should there be circumstances which lead you to doubt the propriety of recognizing the Duke of Aosta as King of Spain, it will be easy to communicate with the Department by telegraph and ask instructions. Should there be no such circumstances, the general policy of the United States, as well as their interests in the present relations with Spain, call for an early and cheerful recognition of the change which the nation has made."

Mr. Fish, Sec. of State, to Mr. Sickles, Dec. 16, 1870. MSS. Inst., Spain; For. Rel., 1871.

"This Government has never recognized Cabral as even entitled to the rights of a belligerent. Certainly, therefore, it cannot acknowledge any claim of his to rule any part of the territory of the Dominican Republic. It is perhaps superfluous to add that this Government has no connection, direct or indirect, with the association which has bought or leased from Boez certain territory around the Bay of Samana. The enterprise adverted to has no other claims upon us than other similar enterprises of citizens of the United States in foreign countries, which

must be undertaken at their own risk and subject to the laws of such countries."

Mr. Fish, Sec. of State, to Mr. Bassett, Mar. 26, 1873. MSS. Inst., Hayti.

"Your dispatch No. 379, on the subject of the reception of the Papal nuncio, and your visit to him, has been read with much interest.

"While the probabilities seem to be almost entirely against the possibility of the restoration of any temporal power to the Pope, he is still recognized as a sovereign by many of the powers of the world, which receive from him diplomatic representatives in the person of either a nuncio or a legate, or possibly in some other capacity, and which powers also accredit to him certain diplomatic representatives.

"With all such arrangements this Government abstains from interference or criticism. It is the right of those powers to determine such questions for themselves; and when one of them, at whose court this Government has a representative, receives a representative from the Pope of higher rank than that of the representative of the United States, it becomes the duty of the latter to observe toward the Pope's representative the same courtesies and formality of the first visit, prescribed by the conventional rules of intercourse and ceremonial, and of the precedence of diplomatic agents, which have been adopted, and almost invariably acted upon for the last sixty years.

"In the case which forms the subject of your very interesting dispatch, you pursued the course which alone would have been expected from one of your accustomed prudence, and of your experience and familiarity with the proprieties of such occasions."

Mr. Fish, Sec. of State, to Mr. Cushing, June 4, 1875. MSS. Inst., Spain; For. Rel., 1875.

The question of the sovereignty of the Ottoman Porte over Tripoli is one as to which, in 1876, the United States was not ready to declare its determination, but which was held to be proper for future diplomatic settlement.

Mr. Fish, Sec. of State, to Aristarchi Bey, May 3, 1876. MSS. Notes, Turkey. For an elaborate exposition of the relations of the United States to Tripoli, see Mr. Fish, Sec. of State, to Aristarchi Bey, Sept. 18, 1876. MSS. Notes, Turkey. See, also, *supra*, § 164.

"It has been the custom of the United States, when such (revolutionary) changes of government have heretofore occurred in Mexico, to recognize and enter into official relations with the *de facto* Government as soon as it shall appear to have the approval of the Mexican people, and should manifest a disposition to adhere to the obligations of treaties and international friendship."

President Hayes, First Annual Message, 1877. See *supra*, § 58. As to *de facto* governments see *supra*, § 7.

"The Government of the United States in its dealings with the Mexican Republic has aimed to pursue not merely a just but a generous and

friendly course. While earnest to guard and protect the rights of its own citizens and the safety of its own territory, it does not seek to intervene in political contests or changes of administration. It is accustomed to accept and recognize the results of a popular choice in Mexico, and not to scrutinize closely the regularity or irregularity of the methods by which Presidents are inaugurated. In the present case it waits before recognizing General Diaz as the President of Mexico until it shall be assured that his election is approved by the Mexican people, and that his administration is possessed of stability to endure, and of disposition to comply with the rules of international comity and the obligations of treaties.

"Such recognition, if accorded, would imply something more than a mere formal assent. It would imply a belief that the Government so recognized will faithfully execute its duties and observe the spirit of its treaties. The recognition of a President in Mexico by the United States has an important moral influence which, as you explain, is appreciated at the capital of that Republic. It aids to strengthen the power and lengthen the tenure of the incumbent, and if, as you say, the example of the United States in that regard is one that other nations are disposed to follow, such recognition would not be without effect, both upon the internal and the external peace of Mexico. You justly remark that in fifty years there have been about sixty changes of administration in Mexico, and it may be added that those administrations have been longest lived that were most faithful and friendly in the discharge of their treaty obligations to the United States.

"When the recent revolution resulted in placing General Diaz in the position of chief magistrate, this Government learned with satisfaction that he was desirous that the obligations of Mexico, under the treaty of July 4, 1868, between the two countries, should be faithfully observed, and that he had accordingly sanctioned the prompt payment of the installment of $250,501 in gold.

"But it is a subject of grave regret that in other respects the customs of friendly intercourse and the obligations of treaties have been neglected, disregarded, or violated. Doubtless, in many cases, the central Government was powerless to prevent these infractions. But they are such as this Government cannot allow to pass without remonstrance, nor without insisting that it is the duty of a friendly power to use the means at its disposal to check or repress them. There have been raids and depredations upon the Texan frontier; theft, murder, arson, and plunder; violation of post-offices and custom-houses; incursions by armed men to destroy life or property. Cattle-stealing has become a profitable occupation. Military officials posted to protect the frontier are said to have protected the robbers. Forced loans have been demanded, and American citizens have been compelled to submit to unjust and unequal exactions. Within the past few weeks the guides of an American commander have been seized and carried into the interior,

with threats of summary execution; and a consul of the United States, in gross violation of international comity, has been imprisoned. For each and all of these acts, many of them committed, if not with the sanction at least in the name of the Government of Mexico, not one single man, so far as is known to this Government, has been punished.

"It is not difficult to believe that General Diaz and his minister of foreign affairs earnestly desire friendly relations and recognition on the part of the United States, and it is gratifying to receive the assurances unofficially made through you that they are disposed to adjust and rectify these complaints and grievances, and are not unwilling to consent to some arrangement for concerted action between the military commanders of the two countries on the frontier for the preservation of peace and order and the protection of life and property. It is natural that Mexican statesmen should urge upon you the argument that the restoration of official relations between the two Governments would open the way toward such an adjustment. But it is natural, on the other hand, that the Government of the United States should be disposed to believe that some guarantee of such an arrangement should be made the condition precedent to any recognition, rather than to trust to the possibility that it may ultimately follow.

"In continuing your present unofficial and informal communications with the Mexican Government, you may present these views, in whole or in part, at your own discretion, not failing, however, to let it be clearly understood that while the Government of the United States seeks amity and cordial relations with their sister Republic, they prefer to await some evidence that their friendship will be reciprocated."

Mr. F. W. Seward, Acting Sec. of State, to Mr. Foster, May 16, 1877. MSS. Inst., Mex.; For. Rel., 1877. See further, as to Mexico, *supra*, § 58.

"The capacity of a state, in itself, for recognition, and the fact of recognition by other states, are two different things. Recognition is not an act wholly depending on the constitutionality or completeness of a change of government, but is not infrequently influenced by the needs of the mutual relations between the two countries. When radical changes have taken place in the domestic organization of the country, or when they seem to be contemplated in its outward relations, it is often a matter of solicitude with this Government that some misunderstanding should exist that the rights acquired by our citizens through the operation of treaties and other diplomatic engagements, shall not be affected by the change. In other words, while the United States regard their international compacts and obligations as entered into with *nations* rather than with political *Governments*, it behooves them to be watchful lest their course toward a Government should affect the relations to the nation. Hence, it has been the customary policy of the United States to be satisfied on this point, and doing so is in nowise an

plication of doubt as to the legitimacy of the internal change which ay occur in another state.

"Pending formal recognition, however, it is not to be supposed that y of the customary business relations or civil courtesies are abruptly rminated. The actual formula of recognition is unmistakable, and, ort of that evident step, the diplomatic fiction of 'officious' intercourse, 'unofficial' action is elastic enough to admit of continuing ordinary tercourse, for the most part, without ruptnre of any of its varied rts."

Mr. Evarts, Sec. of State, to Mr. Baker, June 14, 1879. MSS. Inst., Venez.

"As a general rule of foreign policy, obtaining since the foundation our Government, the recognition of a foreign Government by this is t dependent on right, but on fact. For this reason, when a change curs in the administration of a nation, and the new authorities are in opposed possession of the full machinery of Government, with duly pointed public officers acting in its name, and evincing the purpose well as the power to carry out the international obligations of the ate, recognition would follow, as a matter of course, whatever might the personal character of the head of the new Government, or whatver the nature of his rule, so long as no considerations of policy directly fecting the relations between his country and this intervene to postone such a result."

Mr. Hunter, Acting Sec. of State, to Mr. Baker, Oct. 3, 1879. MSS. Inst., Venez.

A recognition by the Secretary of State of the emissary of a foreign overnment as a "political agent" of such Government, does not by self invest such emissary with a diplomatic character.

Mr. Blaine, Sec. of State, to Mr. Fish, Apr. 15, 1881. MSS. Inst., Switz.

"Should unforeseen and unfortunate circumstances ever bring it into uestion, the United States will be prepared to repeat and enforce the rinciple declared by its highest authority, more than half a century go, that 'with the Governments [of the American Continent] which have eclared their independence and maintained it, and whose independence e have on great consideration and on just principles acknowledged, e could not view any interposition for the purpose of oppressing or ontrolling in any other manner, their destiny, by an European power, any other light than as the manifestation of an unfriendly disposition wards the United States.'"

Mr. Blaine, Sec. of State, to Mr. Logan, May 7, 1881. MSS. Inst., Cent. Am.

"In your last dispatch you informed this Department that the Chilian overnment refused absolutely to recognize General Piérola as repreenting the civil authority in Peru, and that Señor Calderon was at the ead of a provisional Government.

"If the Calderon Government is supported by the character and intelligence of Peru, and is really endeavoring to restore constitutional government with a view both to order within and negotiation with Chili for peace, you may recognize it as the existing provisional Government, and render what aid you can by advice and good offices to that end.

"Mr. Elmore has been received by me as the confidential agent of such provisional Government."

Mr. Blaine, Sec. of State, to Mr. Christiancy, May 9, 1881. MSS. Inst., Peru For. Rel., 1881.

"Special envoy extraordinary leaves Washington for Peru immediately. Continue recognition of Calderon Government."

Mr. Blaine, Sec. of State, to Mr. Hurlbut (telegram), Nov. 26, 1881. MSS. Inst., Peru; For. Rel., 1881.

"The contest between Bolivia, Chili, and Peru has passed from the stage of strategic hostilities to that of negotiation, in which the counsels of this Government have been exercised. The demands of Chili for absolute cession of territory have been maintained, and accepted by the party of General Iglesias to the extent of concluding a treaty of peace with the Government of Chili in general conformity with the terms of the protocol signed in May last between the Chilian commander and General Iglesias. As a result of the conclusion of this treaty, General Iglesias has been formally recognized by Chili as President of Peru, and his government installed at Lima, which has been evacuated by the Chilians. A call has been issued by General Iglesias for a representative assembly, to be elected on the 13th of January, and to meet at Lima on the 1st of March next. Meanwhile the provisional Government of General Iglesias has applied for recognition to the principal powers of America and Europe. When the will of the Peruvian people shall be manifested, I shall not hesitate to recognize the Government approved by them."

President Arthur, Third Annual Message, 1883.

The Department of State will not recognize a revolutionary Government claiming to represent the people in a South American State until it is established by a free expression of the will of that people.

Mr. Frelinghuysen, Sec. of State, to Mr. Logan, Mar. 17, 1884. MSS. Inst. Chili.

The United States recognize foreign Governments as existing *de facto*, without respect to their forms.

7 Op., 582, Cushing, 1855. See *supra*, § 7.

Sir W. Harcourt, in "Historicus," 28, quotes, as sustaining his position that there should be no recognition while a civil war is still depending, the following from Mr. Wheaton (vol. 1, p. 92:) "Until the revolution is consummated, and while the civil war involving a contest for the

Government continues, other states may remain indifferent spectators of the controversy, still continuing to treat the ancient Government as sovereign, and the Government *de facto* as a society entitled to the rights of war against its enemy; or may espouse the cause of the party which they believe to have justice on its side. In the first case, the foreign state fulfills all its obligations under the law of nations; and neither party has a right to complain, provided it maintains an impartial neutrality. In the latter it becomes, of course, the enemy of the party against whom it declares itself, and the ally of the other; and as the positive law of nations makes no distinction in this respect between a just and unjust war, the intervening state becomes entitled to all the rights of war against the opposite party." This passage Sir W. Harcourt accepts, saying that, in the view of Mr. Wheaton, "the question of recognition is clearly one of law, and not of policy only." He proceeds, however, to admit that this position of Mr. Wheaton cannot easily be reconciled with a passage from the same author a few pages further on, in which passage there "is a looseness of statement which is somewhat unsatisfactory. It appears, however, that in Mr. Wheaton's opinion, the part of 'an impartial neutrality' is to abide the event of the contest, and this is the only contest which, Mr. Wheaton says, 'neither party has a right to complain of.' He places the 'acknowledgment of independence,' and the 'joining in alliance,' with one of the belligerents, in another category, and treats them both as a question of politics rather than of law. But, as 'joining in alliance' would certainly be a ground of war, perhaps he means that 'the acknowledgment of independence,' without 'abiding the event of the contest,' would be in itself an act of hostile intervention, and, consequently, belong rather to the province of politics than of law."

VII. *SUCH RECOGNITION DETERMINABLE BY EXECUTIVE.*

§ 71.

The question of recognition of foreign revolutionary or reactionary Governments is one exclusively for the Executive, and cannot be determined internationally by Congressional action.

Mr. Seward, Sec. of State, to Mr. Dayton, Apr. 7, 1864. MSS. Inst., France.

Whether a revolted colony is to be treated as a sovereign state is a political question to be decided by governments, not by courts of justice; and the courts of the United States must consider the ancient state of things remaining, until the sovereignty of the revolting colony is acknowledged by the Government of the United States.

Rose v. Himely, 4 Cranch, 241; Kennett v. Chambers, 14 Howard, 38; Gelston v. Hoyt, 3 Wheat., 324.

The course of the United States with reference to a revolted portion of a foreign nation is regulated and directed by the legislative and executive departments of the Government, and not by the judicial department. If the Government remains neutral, and recognizes the existence of a civil war, the courts cannot consider as criminal those acts of hostility which war authorizes, and which the new Government may direct against its enemy. The persons or vessels employed in the service of a terri-

tory whose belligerency has been recognized by this Government must be permitted to prove the fact of their being so employed by the same testimony as would be sufficient to prove that such person or vessel was employed in the service of an acknowledged state. The seal of such unacknowledged Government cannot be permitted to prove itself, but may be proved by such testimony as the nature of the case admits; and the fact that a person or vessel is in the service of such Government may be proved without proving the seal.

U. S. *v.* Palmer, 3 Wheat., 610. See the Estrella, 4 Wheat., 298. As to piracy in such cases, see *infra*, § 361.

The Government of the United States having recognized the existence of civil war between Spain and her colonies, the courts of the Union are bound to consider as lawful those acts which war authorizes, and which the new Governments in South America may direct against their enemy. Captures made under their commissions are to be treated by the courts as other captures, and their legality cannot be determined unless they were made in violation of the neutral rights of the United States.

Divina Pastora, 4 Wheat., 52.

There existing between Spain and her revolted colony—the Republic of Venezuela—an open war, in which the Government of the United States maintains strict neutrality, the courts cannot interfere with a capture made by a cruiser sailing under a commission from the revolting belligerent.

The Josefa Segunda, 5 Wheat., 338.

The United States not having acknowledged the existence of any Mexican Republic or State at war with Spain, the Supreme Court does not recognize the existence at Galveston of any lawful court of prize.

The Nueva Anna, 6 Wheat., 193.

In political matters the courts follow the department of the Government to which those matters may be committed, and will not recognize the existence of a new Government until it has been recognized by the Executive.

U. S. *v.* Pico, 23 Howard, 326; The Prize Cases, 2 Black, 635; U. S. *v.* Yorba, 1 Wall., 412; U. S. *v.* Hutchings, 2 Wheel., C. C., 543; The Hornet, 2 Abbott, U. S., 35; U. S. *v.* Baker, 5 Blatch., 6; 1 Brunner, C. C., 489.

The judiciary follows the Executive on the question of recognition of belligerent rights.

U. S. *v.* Palmer, 3 Wheat., 610; The Nueva Anna, 6 Wheat., 193.

As a civil war is never publicly proclaimed, *eo nomine*, against insurgents, its actual existence is a fact in our domestic history which the courts are bound to recognize. As, in the case of an insurrection, the President must, in the absence of Congressional action, determine what

degree of force the crisis demands, and as in political matters the courts must be governed by the decisions and acts of the political department to which this power is intrusted, the proclamation of blockade by the President is of itself conclusive evidence that a state of war existed which demanded and authorized recourse to such a measure.

The Prize Cases, 2 Black, 635.

Courts having an international jurisdiction may take notice of existing sovereignties from the fact of their continuous existence as such, and their recognition as such in history.

Consul of Spain *v.* the Conception, 2 Wheel., Cr. Cas., 597; 1 Brunner, Col. Cas. 597; S. P., the Maria Josepha, 2 Wheel., Cr. Cas. 600; 1 Brunner, Col. Cas. 500. Compare Williams *v.* Suffolk Ins. Co., 13 Pet., 415; affirming 3 Sumn., 270.

As to non-reception by President of foreign political malcontents, see *infra*, § 91.

The action of President Taylor, through Mr. Clayton, Secretary of State, in sending, in June, 1849, Mr. A. D. Mann as a special agent to investigate the condition of the Hungarian insurrection, is elsewhere considered. (*Supra*, § 47.) In Mr. Mann's instructions, June 18, 1849, is the following:

"Should the new Government prove to be, in your opinion, firm and stable, the President will cheerfully recommend to Congress, at their next session, the recognition of Hungary, and you might intimate, if you should see fit, that the President would in that event be gratified to receive a diplomatic agent from Hungary in the United States by or before the next meeting of Congress, and that he entertains no doubt whatever that in case her new Government should prove to be firm and stable, her independence would be speedily recognized by that enlightened body."

As to this it is to be remarked that while Mr. Webster, who shortly afterwards, on the death of President Taylor, became Secretary of State, sustained the sending of Mr. Mann as an agent of inquiry, he was silent as to this paragraph, and suggests, at the utmost, only a probable Congressional recognition in case the new Government should prove to be firm and stable. In making Congress the arbiter, President Taylor followed the precedent of President Jackson, who, on March 3, 1837, signed a resolution of Congress for the recognition of the independence of Texas. The recognition, however, by the United States, of the independence of Belgium, of the powers who threw off Napoleon's yoke, and of the South American states who have from time to time declared themselves independent of prior Governments, has been primarily by the Executive, and such also has been the case in respect to the recognition of the successive revolutionary Governments of France.

VIII. *ACCRETION, NOT COLONIZATION, THE POLICY OF THE UNITED STATES.*

§ 72.

The possession by Spain of the mouth of the Mississippi might have been tolerated by the United States from the fact that she was already in possession, and that her power was not such as to make her control of

territory, though annoying and disadvantageous, necessarily a
to the United States; but if France should have taken possession
er treaty from Spain, "the worst effects are to be apprehended,"
the United States would take the most vigorous measures, even
ugh they should involve war, to avert such a calamity.

Mr. Madison, Sec. of State, to Mr. Livingston, May 1, 1802. MSS. Inst., Min— .
isters. To same effect, see Mr. Madison to Mr. C. Pinckney, May 11, 1802; ;
Mr. Madison to Messrs. Livingston and Monroe, Mar. 2, 1803, *ibid.* See also o
infra, §§ 148, 154; *supra*, § 58.

"The cession of Louisiana and the Floridas by Spain to France work s
most sorely on the United States. On this subject the Secretary of
State has written to you fully; yet I cannot forbear recurring to it pe r.
sonally, so deep is the impression it makes on my mind. It complete y
reverses all the political relations of the United States, and will form a
new epoch in our political course. Of all nations of any considerati n,
France is the one which, hitherto, has offered the fewest points on whi ch
we could have any conflict of right, and the most points of a communi on
of interests. From these causes we have ever looked to her as our
natural friend, as one with which we never could have an occasion of dif-
ference. Her growth, therefore, we viewed as our own, her misfortunes
ours. There is on the globe one single spot, the possessor of which is our
natural and habitual enemy. It is New Orleans, through which the
produce of three-eighths of our territory must pass to market, and from
its fertility it will ere long yield more than half of our whole produce,
and contain more than half of our inhabitants. France, placing herself
in that door, assumes to us the attitude of defiance. Spain might have
retained it quietly for years. Her pacific dispositions, her feeble state,
would induce her to increase our facilities there so that her possession
of the place would hardly be felt by us, and it would not, perhaps, be
very long before some circumstance might arise which might make the
cession of it to us the price of something of more worth to her. Not so
can it ever be in the hands of France; the impetuosity of her temper,
the energy and restlessness of her character, placed in a point of eterna
friction with us and our character, which, though quiet and loving peac
and the pursuit of wealth, is high-minded, despising wealth in comp
tition with insult or injury, enterprising, and energetic as any nati
on earth. These circumstances render it impossible that France
the United States can continue long friends when they meet i
irritable a position. They, as well as we, must be blind if they d
see this, and we must be very improvident if we do not begin to
arrangements on that hypothesis. The day that France takes p
sion of New Orleans fixes the sentence which is to retain her f
within her low-water mark. It seals the union of two nations
conjunction, can maintain exclusive possession of the ocean.
that moment we must marry ourselves to the British fleet and
We must turn all our attention to a maritime force, for whic
sources place us on very high ground, and having formed and c
together a power which may render re-enforcement of her se
here impossible to France, make the first cannon which sha
in Europe the signal for the tearing up any settlement she
made, and for holding the two continents of America in se
for the common purposes of the united British and Americ

This is not a state of things we seek or desire. It is one which this measure, if adopted by France, forces on us as necessarily as any other cause, by the laws of nature, brings on its necessary effect. It is not from a fear of France that we deprecate this measure proposed by her, for, however greater her force is than ours, compared in the abstract, it is nothing in comparison to ours when to be exerted on our soil, but it is from a sincere love of peace, and a firm persuasion that, bound to France by the interests and strong sympathies still existing in the minds of our citizens, and holding relative positions which insure their continuance, we are secure of a long course of peace, whereas the change of friends, which will be rendered necessary if France changes that position, embarks us necessarily as a belligerent power in the first war of Europe. In that case France will have held possession of New Orleans during the interval of a peace, long or short, at the end of which it will be wrested from her. Will this short-lived possession have been an equivalent to her for the transfer of such a weight into the scale of her enemy? Will not the amalgamation of a young, thriving nation continue to that enemy the health and force which are now so evidently on the decline? And will a few years' possession of New Orleans add equally to the strength of France? She may say she needs Louisiana for the supply of her West Indies. She does not need it in time of peace, and in war she could not depend on them, because they would be so easily intercepted. I should suppose that all these considerations might in some proper form be brought into view of the Government of France. Though stated by us, it ought not to give offense, because we do not bring them forward as a menace, but as consequences not controllable by us, but inevitable from the course of things. We mention them not as things which we desire by any means, but as things we deprecate, and we beseech a friend to look forward, and to prevent them for our common interest."

President Jefferson to Mr. Livingston, Apr. 18, 1802. 4 Jeff. Works, pp. 431–433; 3 Randall's Jefferson, 6.

"As the question may arise, how far in a state of war one of the parties can of right convey territory to a neutral power, and thereby deprive its enemy of the chance of conquest incident to war, especially when the conquest may have been actually projected, it is thought proper to observe to you, first, that in the present case the project of peaceable acquisition by the United States originated prior to the war, and consequently before a project of conquest could have existed; secondly, that the right of a neutral to procure for itself by a *bona fide* transaction property of any sort from a belligerent power ought not to be frustrated by the chance that a rightful conquest thereof might thereby be precluded. A contrary doctrine would sacrifice the just interests of peace to the unreasonable pretensions of war, and the positive rights of one nation to the rights of another. A restraint on the alienation of territory from a nation at war to a nation at peace is imposed only in cases where the proceeding might have a collusive reference to the existence of the war, and might be calculated to save the property from danger, by placing it in secret trust, to be reconveyed on the

return of peace. No objection of this sort can be made to the acquisitions we have in view. The measures taken on this subject were taken before the existence or the appearance of war, and they will be pursued as they were planned, with the *bona fide* purpose of vesting the acquisition forever in the United States."

Mr. Madison, Sec. of State, to Messrs. Livingston and Monroe, May 28, 1803. MSS. Inst., Ministers.

"Congress witnessed, at their last session, the extraordinary agitation produced in the public mind by the suspension of our right of deposit at the port of New Orleans, no assignment of another place having been made according to treaty. They were sensible that the continuance of that privation would be more injurious to our nation than any consequences which could flow from any mode of redress, but reposing just confidence in the good faith of the Government whose officer had committed the wrong, friendly and reasonable representations were resorted to, and the right of deposit was restored.

"Previous, however, to this period we had not been unaware of the danger to which our peace would be perpetually exposed while so important a key to the commerce of the Western country remained under foreign power. Difficulties, too, were presenting themselves as to the navigation of other streams, which, arising within our territories, pass through those adjacent. Propositions had, therefore, been authorized for obtaining on fair conditions the sovereignty of New Orleans, and of other possessions in that quarter interesting to our quiet, to such extent as was deemed practicable; and the provisional appropriation of two millions of dollars, to be applied and accounted for by the President of the United States, intended as part of the price, was considered as conveying the sanction of Congress to the acquisition proposed. The enlightened Government of France saw, with just discernment, the importance to both nations of such liberal arrangements as might best and permanently promote the peace, friendship, and interests of both; and the property and sovereignty of all Louisiana, which had been restored to them, have on certain conditions been transferred to the United States by instruments bearing date the 30th of April last. When these shall have received the constitutional sanction of the Senate, they will without delay be communicated to the Representatives also for the exercise of their functions as to those conditions which are within the powers vested by the Constitution in Congress. While the property and sovereignty of the Mississippi and its waters secure an independent outlet for the produce of the Western States, and an uncontrolled navigation through their whole course, free from collision with other powers and the dangers to our peace from that source, the fertility of that country, its climate and extent, promise in due season important aids to our Treasury, an ample provision for

our posterity and a wide-spread field for the blessings of freedom and equal laws."

President Jefferson, Third Annual Message 1803. See *infra*, § 148, as to treaty of purchase. That the purchase of Louisiana was approved by John Adams, see 9 John Adams's Works, 631, 632.

"It will be objected to our receiving Cuba that no limit can then be drawn to our future acquisitions. Cuba can be defended by us without a navy, and this develops the principle which ought to limit our views. Nothing should ever be accepted which would require a navy to defend it."

Mr. Jefferson to President Madison, Apr. 27, 1809. 5 Jeff. Works, 443.

The negotiations, under Mr. Monroe's Presidency, for the purchase of Florida, are noticed *infra*, § 161. The argument chiefly pressed by Mr. J. Q. Adams, Sec. of State, when advocating the treaty, was that of contiguity.

In December, 1822, the Government of St. Salvador proposed its annexation to the United States, the object being alleged to be the escape from forced annexation to Mexico under Yturbide. The offer, on the overthrow of the Government of Yturbide, was withdrawn.

Mr. Clay, Sec. of State, to Mr. Williams, Feb. 10, 1826. MSS. Inst., Ministers.

For offer by President Jackson to purchase from Mexico the Bay of San Francisco and the adjacent shore for half a million of dollars, and for further offer as to purchasing Texas, see Mr. Forsyth, Sec. of State, to Mr. Butler, Aug. 6, Nov. 9, 1835. MSS. Inst., Mex.

President Van Buren's message of Oct. 3, 1837, with correspondence relative to proposed annexation of Texas, is in House Ex. Doc. No. 40, 25th Cong., 1st sess.

As to recognition and annexation of Texas, see *supra*, § 70.

As to assumption of incumbrances of Texas, see *supra*, § 5.

In the Br. and For. St. Pap. for 1841–'42, vol. 30, are given a series of documents relating to the annexation of Texas. In the same work for 1842–'43, vol. 31, are the following:

Mr. Waddy Thompson (Mexico) to Mr. Webster (Sec.), July 30, 1842, inclosing circular of Mexican minister of foreign relations to diplomatic corps as to alleged violation of neutrality by the United States, July 6, 1842.

Mr. Thompson to Mr. Webster, Sept. 10, 1842.

Mr. Bocanegra to Mr. Thompson, Sept. 10, 1842.

In the same work for 1844–'45, vol. 33, are the following:

Lord Aberdeen, secretary of foreign affairs, to Mr. Pakenham, British minister at Washington, Dec. 26, 1843, stating that while Great Britain had acknowledged the independence of Texas, she did not desire to establish dominant influence in that state, or to use any undue pressure there for the abolition of slavery.

Messrs. Van Zandt and Henderson, envoys from Texas, to Mr. Calhoun, Apr. 15, 1844, stating financial condition of Texas.

Mr. Buchanan (Sec.) in reply to Gen. Almonte, Mar. 10, 1845.

The envoy of France to the President of Texas, May 20, 1845, as to terms of recognition of independence of Texas by Mexico.

Acceptance of such recognition by Texas, May 19, 1845.

Armistice proclaimed by President of Texas, June 15, 1845.

Message of President of the United States to Senate, submitting treaty of annexation, Apr. 22, 1844.

Message of President to House of Representatives, June 10, 1844, announcing rejection of treaty by Senate and suggesting legislation.

Joint resolution of annexation, Mar. 1, 1845.

Proclamation of President of Texas, Apr. 15, 1845, calling for legislation on such annexation.

Ordinance of Texas of July 4, 1845, accepting annexation.

Constitution of the State of Texas, Aug. 27, 1845.

In Lesur's Annuaire for 1832, app. 82, 114, are given many important papers relative to the annexation of Texas. On the same subject may be consulted 2 Lawrence Com. sur droit int., 332, *ff.*

"By the treaty of the 22d of February, 1819, between the United States and Spain, the Sabine was adopted as the line of boundary between the two powers. Up to that period no considerable colonization had been effected in Texas; but the territory between the Sabine and the Rio Grande being confirmed to Spain by the treaty, applications were made to that power for grants of land, and such grants, or permissions of settlement, were, in fact, made by the Spanish authorities in favor of citizens of the United States proposing to emigrate to Texas in numerous families, before the declaration of independence by Mexico. And these early grants were confirmed, as is well known, by successive acts of the Mexican Government, after its separation from Spain. In January, 1823, a national colonization law was passed, holding out strong inducements to all persons who should incline to undertake the settlement of uncultivated lands; and although the Mexican law prohibited for a time citizens of foreign countries from settling, as colonists, in territories immediately joining such foreign countries, yet even this restriction was afterwards repealed or suspended, so that, in fact, Mexico, from the commencement of her political existence, held out the most liberal inducements to immigrants into her territories, with full knowledge that these inducements were likely to act, and expecting they would act, with the greatest effect upon citizens of the United States, especially of the Southern States, whose agricultural pursuits naturally rendered the rich lands of Texas, so well suited to their accustomed occupation, objects of desire to them. The early colonists of the United States, introduced by Moses and Stephen Austin under these inducements and invitations, were persons of most respectable character, and their undertaking was attended with very severe hardships, occasioned in no small degree by the successive changes in the Government of Mexico. They nevertheless persevered and accomplished a settlement. And, under the encouragements and allurements thus held out by Mexico, other emigrants followed, and many thousand colonists from the United States and elsewhere had settled in Texas within ten years from the date of Mexican independence. Having some reasons to complain, as they thought, of the Government over them, and especially of the aggressions of the

Mexican military stationed in Texas, they sought relief by applying to the supreme Government for the separation of Texas from Coahuila, and for a local government for Texas itself. Not having succeeded in this object, in the process of time, and in the progress of events, they saw fit to attempt an entire separation from Mexico, to set up a Government of their own, and to establish a political sovereignty. War ensued; and the battle of San Jacinto, fought on the 21st of April, 1836, achieved their independence. The war was from that time at an end, and in March following the independence of Texas was formally acknowledged by the Government of the United States."

Mr. Webster, Sec. of State, to Mr. Thompson, July 8, 1842. MSS. Inst., Mex. 6 Webster's Works, 448.

See, further, as to recognition and annexation of Texas, *supra*, §§ 5, 70.

In a speech on the Oregon bill, delivered in the Senate, on January 24, 1843, Mr. Calhoun said:

"*Time* is acting for us; and if we shall have the wisdom to trust its operation, it will assert and maintain our right with resistless force, without costing a cent of money or a drop of blood. There is often, in the affairs of Government, more efficiency and wisdom in non-action than in action. All we want to effect our object in this case is 'a wise and masterly inactivity.' Our population is rolling towards the shores of the Pacific with an impetus greater than what we realize. It is one of those forward movements which leaves anticipation behind. In the period of thirty-two years which have elapsed since I took my seat in the other house, the Indian frontier has receded a thousand miles to the west. At that time our population was much less than half what it is now. It was then increasing at the rate of about a quarter of a million annually; it is now not less than six hundred thousand, and still increasing at the rate of something more than 3 per cent. compound annually. At that rate it will soon reach the yearly increase of a million. If to this be added that the region west of Arkansas and the State of Missouri, and south of the Missouri River, is occupied by half-civilized tribes, who have their lands secured to them by treaty (and which will prevent the spread of population in that direction), and that this great and increasing tide will be forced to take the comparatively narrow channel to the north of that river and south of our northern boundary, some conception may be formed of the strength with which the current will run in that direction and how soon it will reach the eastern gorges of the Rocky Mountains. I say some conception, for I feel assured that the reality will outrun the anticipation. In illustration, I will repeat what I stated when I first addressed the Senate on this subject. As wise and experienced as was President Monroe, as much as he had witnessed of the growth of our country in his time, so inadequate was his conception of its rapidity, that near the close of his administration—in the year 1824—he proposed to colonize the Indians of New York and those north of the Ohio River and east of the Mississippi, in what is now called the Wisconsin Territory, under the impression that it was a portion of our territory so remote that they would not be disturbed by our increasing population for a long time to come. It is now but eighteen years since, and already, in that short period, it is a great and flourishing territory ready to knock at our door for admission as one of the sovereign members of the Union. But what is still more striking, what is really wonderful and almost miraculous is, that another territory (Iowa), still farther west (beyond the Mississippi)

is sprung up as if by magic, and has already outstripped Wisconsin, nd may knock for entrance before she is prepared to do so. Such is he wonderful growth of a population which has attained the number urs has—yearly increasing at a compound rate—and such the impetus with which it is forcing its way, resistlessly, westward. It will soon, far sooner than anticipated, reach the Rocky Mountains, and be ready to pour into the Oregon Territory, when it will come into our possession without resistance or struggle; or, if there should be resistance, it would be feeble and ineffectual. *We should then* be as much stronger there, comparatively, than Great Britain, as *she is now* stronger than we are; and it would then be *as idle for her* to attempt to assert and maintain her exclusive claim to the territory *against us*, as it would *now be in us* to attempt it *against her*. Let us be wise and abide our time and it will accomplish all that we desire with more certainty and with infinitely less sacrifice than we can without it."

4 Calhoun's Works, 245 *ff.*

The independence of Mexico having been acknowledged in 1843, n only by the United States, but by the principal European powers, a Texas having for eight years resisted successfully Mexican attempts subjugation, the annexation of Texas by the United States cannot justly complained of by Mexico as an invasion of international law.

Mr. Upshur, Sec. of State, to Mr. Thompson, Oct. 20, 1843. MSS. Inst., Mex. See Mr. Upshur to Mr. Green, Apr. 19, 1844, *ibid.*

"It is our policy to increase by growing and spreading out into unoccupied regions, assimilating all we incorporate. In a word, to increase by accretion, and not through conquest by the addition of masses held together by the cohesion of force. No system can be more unsuited to the latter process, or better adapted to the former, than our admirable Federal system. If it should not be resisted in its course, it will probably fulfill its destiny, without disturbing our neighbors or putting in jeopardy the general peace; but if it be opposed by foreign interference, a new direction would be given to our energy, much less favorable to harmony with our neighbors and to the general peace of the world. The change would be undesirable to us, and much less in accord with what I have assumed to be primary objects of policy on the part of France, England, and Mexico."

Mr. Calhoun, Sec. of State, to Mr. King, Aug. 12, 1844. MSS. Inst., France.

"No measure of policy has been more steadily or longer pursued, and that by both of the great parties into which the Union is divided, [than the annexation of Texas]. Many believed that Texas was embraced in the cession of Louisiana, and was improperly, if not unconstitutionally, surrendered by the treaty of Florida in 1819. Under that impression, and the general conviction of its importance to the safety and welfare of the Union, its annexation has been an object of constant pursuit ever since. It was twice attempted to acquire it during the administration of Mr. Adams, once in 1825, shortly after he came into power, and again in 1827. It was thrice attempted under the administration of his successor, General Jackson, first in 1829, immediately after he came

into power, again in 1833, and finally in 1835, just before Texas declared her independence. Texas herself made a proposition for annexation in 1837, at the commencement of Mr. Van Buren's administration, which he declined, not, however, on the grounds of opposition to the policy of the measure. The United States had previously acknowledged her independence, and the example has since been followed by France and Great Britain. The latter, soon after her recognition, began to adopt a line of policy in reference to Texas which has given greatly increased importance to the measure of annexation, by making it still more essential to the safety and welfare both of her and the United States."

Mr. Calhoun, Sec. of State, to Mr. Shannon, Sept. 10, 1844. MSS. Inst., Mex.

"Texas had declared her independence, and maintained it by her arms for more than nine years. She has had an organized Government in successful operation during that period. Her separate existence as an independent state had been recognized by the United States and the principal powers of Europe. Treaties of commerce and navigation had been concluded with her by different nations, and it had become manifest to the whole world that any further attempt on the part of Mexico to conquer her or overthrow her Government would be in vain. Even Mexico herself had become satisfied of this fact; and while the question of annexation was pending before the people of Texas, during the past summer, the Government of Mexico, by a formal act, agreed to recognize the independence of Texas on condition that she would not annex herself to any other power. The agreement to acknowledge the independence of Texas, whether with or without this condition, is conclusive against Mexico. The independence of Texas is a fact conceded by Mexico herself, and she had no right or authority to prescribe restrictions as to the form of Government which Texas might afterward choose to assume."

President Polk, First Annual Message, 1845.

As to assumption of Texas debt by the United States, see *supra*, § 5.

As to recognition of Texas, see *supra*, § 70.

In President Polk's message of April 28, 1848, after reciting an offer from Yucatan "to transfer the dominion and sovereignty of the peninsula to the United States," he says, "whilst it is not my purpose to recommend the adoption of any measure with a view to the acquisition of the 'dominion and sovereignty over Yucatan,' yet, according to our established policy, we could not consent to a transfer of this 'dominion and sovereignty' to any other power." Congress took no action on this message of President Polk.

The correspondence in this connection is given in the British and Foreign State Papers for 1860-'61, pp. 1184 *ff*.

As to discussion in reference to Yucatan, see *supra*, § 57.

The correspondence of the United States with Yucatan relative to the independence of that state and the offer of its sovereignty to the United States will be found in Senate Ex. Doc. 40, 30th Cong., 1st sess. See also same session Senate Ex. Doc. Nos. 45, 49. For other papers relative thereto see the Br. and For. St. Pap. for 1860-'61, vol. 51.

The policy of the United States on the subject of territorial growth is discussed in the following letters of Mr. Everett:

"You are well acquainted with the melancholy circumstances which have hitherto prevented a reply to the note which you addressed to my predecessor on the 8th of July.

"That note, and the instruction of M. de Turgot of the 31st March, with a similar communication from the English minister, and the *projet* of a convention between the three powers relative to Cuba, have been among the first subjects to which my attention has been called by the President.

"The substantial portion of the proposed convention is expressed in a single article in the following terms:

"'The high contracting parties hereby, severally and collectively, disclaim, now and for hereafter, all intention to obtain possession of the Island of Cuba, and they respectively bind themselves to discountenance all attempt to that effect on the part of any power or individuals whatever.'

"'The high contracting parties declare, severally and collectively, that they will not obtain or maintain for themselves or for any one of themselves any exclusive control over the said island, nor assume nor exercise any dominion over the same.'

"The President has given the most serious attention to this proposal, to the notes of the French and British ministers accompanying it, and to the instructions of M. de Turgot and the Earl of Malmesbury, transmitted with the project of the convention, and he directs me to make known to you the view which he takes of this important and delicate subject.

"The President fully concurs with his predecessors, who have, on more than one occasion, authorized the declaration referred to by M. de Turgot and Lord Malmesbury that the United States could not see with indifference the Island of Cuba fall into the possession of any other European Government than Spain; not, however, because we should be dissatisfied with any natural increase of territory and power on the part of France or England. France has within twenty years acquired a vast domain on the northern coast of Africa, with a fair prospect of indefinite extension. England, within half a century, has added very extensively to her Empire. These acquisitions have created no uneasiness on the part of the United States.

"In like manner the United States have within the same period greatly increased their territory. The largest addition was that of Louisiana, which was purchased from France. These accessions of territory have probably caused no uneasiness to the great European powers, as they have been brought about by the operation of natural causes, and without any disturbance of the international relations of the principal states. They have been followed also by a great increase of mut-

ually beneficial commercial intercourse between the United States and Europe.

"But the case would be different in reference to the transfer of Cuba from Spain to any other European power. That event could not take place without a serious derangement of the international system now existing, and it would indicate designs in reference to this hemisphere which could not but awaken alarm in the United States.

"We should view it in somewhat the same light in which France and England would view the acquisition of some important island in the Mediterranean by the United States, with this difference, it is true, that the attempt of the United States to establish themselves in Europe would be a novelty, while the appearance of a European power in this part of the world is a familiar fact; but this difference in the two cases is merely historical, and would not diminish the anxiety which, on political grounds, would be caused by any great demonstration of European power in a new direction in America.

"M. de Turgot states that France could never see with indifference the possession of Cuba by *any* power but Spain, and explicitly declares that she has no wish or intention of appropriating the island to herself, and the English minister makes the same avowal on behalf of his Government. M. de Turgot and Lord Malmesbury do the Government of the United States no more than justice in remarking that they have often pronounced themselves substantially in the same sense. The President does not covet the acquisition of Cuba for the United States. At the same time he considers the condition of Cuba as mainly an American question. The proposed convention proceeds on a different principle. It assumes that the United States have no other or greater interest in the question than France or England, whereas it is necessary only to cast one's eye on the map to see how remote are the relations of Europe, and how intimate those of the United States with this island.

"The President, doing full justice to the friendly spirit in which his concurrence is invited by France and England, and not insensible to the advantages of a good understanding between the three powers in reference to Cuba, feels himself, nevertheless, unable to become a party to the proposed compact for the following reasons:

"It is, in the first place, in his judgment, clear (as far as the respect due from the Executive to a co-ordinate branch of the Government will permit him to anticipate its decision) that no such convention would be viewed with favor by the Senate. Its certain rejection by that body would leave the question of Cuba in a more unsettled position than it is now. This objection would not require the President to withhold his concurrence from the convention if no other objection existed, and if a strong sense of the utility of the measure rendered it his duty, as far as Executive action is concerned, to give his consent to the arrangement. Such, however, is not the case.

"The convention would be of no value unless it were lasting; accordingly its terms express a perpetuity of purpose and obligation. Now, it may well be doubted whether the Constitution of the United States would allow the treaty-making power to impose a permanent disability on the American Government for all coming time, and prevent it, under any future change of circumstances, from doing what has been so often done in times past. In 1803 the United States purchased Louisiana of France, and in 1819 they purchased Florida of Spain. It is not within the competence of the treaty-making power in 1852 effectually to bind the Government, in all its branches, and for all coming time, not to make a similar purchase of Cuba. A like remark, I imagine, may be made even in reference both to France and England, where the treaty-making power is less subject than it is with us to the control of other branches of the Government.

"There is another strong objection to the proposed agreement. Among the oldest traditions of the Federal Government is an aversion to political alliances with European powers. In his memorable farewell address, President Washington says: 'The great rule of conduct for us in regard to foreign relations is, in extending our commercial relations, to have with them as little political connection as possible. So far as we have already formed engagements let them be fulfilled with perfect good faith. Here let us stop.' President Jefferson, in his inaugural address in 1801, warned the country against 'entangling alliances.' This expression, now become proverbial, was unquestionably used by Mr. Jefferson in reference to the alliance with France of 1778, an alliance at the time of incalculable benefit to the United States, but which, in less than twenty years, came near involving us in the wars of the French revolution, and laid the foundation of heavy claims upon Congress, not extinguished to the present day. It is a significant coincidence that the particular provision of the alliance which occasioned these evils was that under which France called upon us to aid her in defending her West Indian possessions against England. Nothing less than the unbounded influence of Washington rescued the Union from the perils of that crisis, and preserved our neutrality.

"But the President has a graver objection to entering into the proposed convention. He has no wish to disguise the feeling that the compact, although equal in its terms, would be very unequal in substance. France and England by entering into it would disable themselves from obtaining possession of an island remote from their seats of Government, belonging to another European power, whose natural right to possess it must always be as good as their own—a distant island in another hemisphere, and one which, by no ordinary or peaceful course of things, could ever belong to either of them. If the present balance of power in Europe should be broken up—if Spain should become unable to maintain the island in her possession, and France and England should be engaged in a death struggle with each other—Cuba might

then be the prize of the victor. Till these events all take place, the President does not see how Cuba can belong to any European power but Spain.

"'The United States, on the other hand, would, by the proposed convention, disable themselves from making an acquisition which might take place without any disturbance of existing foreign relations, and in the natural order of things. The Island of Cuba lies at our doors. It commands the approach to the Gulf of Mexico, which washes the shores of five of our States. It bars the entrance of that great river which drains half the North American continent, and with its tributaries forms the largest system of internal water communication in the world. It keeps watch at the doorway of our intercourse with California by the Isthmus route. If an island like Cuba, belonging to the Spanish Crown, guarded the entrance of the Thames and the Seine, and the United States should propose a convention like this to France and England, those powers would assuredly feel that the disability assumed by ourselves was far less serious than that which we asked them to assume.

"The opinions of American statesmen at different times and under varying circumstances have differed as to the desirableness of the acquisition of Cuba by the United States. Territorially and commercially, it would in our hands be an extremely valuable possession. Under certain contingencies it might be almost essential to our safety. Still, for domestic reasons, on which in a communication of this kind it might not be proper to dwell, the President thinks that the incorporation of the island into the Union at the present time, although effected with the consent of Spain, would be a hazardous measure, and he would consider its acquisition by force, except in a just war with Spain (should an event so gravely to be deprecated take place), as a disgrace to the civilization of the age.

"The President has given ample proof of the sincerity with which he holds these views. He has thrown the whole force of his constitutional power against all illegal attacks upon the island. It would have been perfectly easy for him, without any seeming neglect of duty, to allow projects of a formidable character to gather strength by connivance. No amount of obloquy at home, no embarrassments caused by the indiscretions of the colonial government of Cuba, have moved him from the path of duty in this respect. The captain-general of that island, an officer apparently of upright and conciliatory character, but probably more used to military command than the management of civil affairs, has, on a punctilio in reference to the purser of a private steamship (who seems to have been entirely innocent of the matters laid to his charge), refused to allow passengers and the mails of the United States to be landed from a vessel having him on board. This certainly is a very extraordinary mode of animadverting upon a supposed abuse of the liberty of the press by the subject of a foreign Government in his native country. The captain-general is not permitted by his Government, 3,000 miles

off, to hold any diplomatic intercourse with the United States. He is subject in no degree to the direction of the Spanish minister at Washington; and the President has to choose between a resort to force, to compel the abandonment of this gratuitous interruption of commercial intercourse (which would result in war), and a delay of weeks and months, necessary for a negotiation with Madrid, with all the chances of the most deplorable occurrences in the interval—and all for a trifle that ought to have admitted a settlement by an exchange of notes between Washington and the Havana. The President has, however, patiently submitted to these evils, and has continued faithfully to give to Cuba the advantages of those principles of the public law under the shelter of which she has departed, in this case, from the comity of nations. But the incidents to which I allude, and which are still in train, are among many others which point decisively to the expediency of some change in the relations of Cuba; and the President thinks that the influence of France and England with Spain would be well employed in inducing her so to modify the administration of the Government of Cuba as to afford the means of some prompt remedy for evils of the kind alluded to, which have done much to increase the spirit of unlawful enterprise against the island.

"That a convention such as is proposed would be a transitory arrangement, sure to be swept away by the irresistible tide of affairs in a new country, is, to the apprehension of the President, too obvious to require a labored argument. The project rests on principles applicable, if at all, to Europe, where international relations are, in their basis, of great antiquity, slowly modified, for the most part, in the progress of time and events, and not applicable to America, which, but lately a waste, is filling up with intense rapidity, and adjusting on natural principles those territorial relations which, on the first discovery of the continent, were in a good degree fortuitous.

"The comparative history of Europe and America, even for a single century, shows this. In 1752 France, England, and Spain were not materially different in their political position in Europe from what they now are. They were ancient, mature, consolidated states, established in their relations with each other and the rest of the world—the leading powers of Western and Southern Europe. Totally different was the state of things in America. The United States had no existence as a people; a line of English colonies, not numbering much over a million of inhabitants, stretched along the coast. France extended from the Bay of Saint Lawrence to the Gulf of Mexico, and from the Alleghanies to the Mississippi; beyond which, westward, the continent was a wilderness, occupied by wandering savages, and subject to a conflicting and nominal claim on the part of France and Spain. Everything in Europe was comparatively fixed; everything in America, provisional, incipient, and temporary, except the law of progress, which is as organic and vital in the youth of states as of individual men. A struggle between the

provincial authorities of France and England for the possession of a petty stockade at the confluence of the Monongahela and Alleghany, kindled the seven years' war; at the close of which, the great European powers, not materially affected in their relations at home, had undergone astonishing changes on this continent. France had disappeared from the map of America, whose inmost recesses had been penetrated by her zealous missionaries and her resolute and gallant adventurers; England had added the Canadas to her transatlantic dominions; Spain had become the mistress of Louisiana, so that, in the language of the archbishop of Mexico, in 1770, she claimed Siberia as the northern boundary of New Spain.

"Twelve years only from the treaty of Paris elapsed, and another great change took place, fruitful of still greater changes to come. The American Revolution broke out. It involved France, England, and Spain in a tremendous struggle, and at its close the United States of America had taken their place in the family of nations. In Europe the ancient states were restored substantially to their former equilibrium, but a new element, of incalculable importance in reference to territorial arrangements, is henceforth to be recognized in America.

"Just twenty years from the close of the war of the American Revolution, France, by a treaty with Spain—of which the provisions have never been disclosed—possessed herself of Louisiana, but did so only to cede it to the United States; and in the same year Lewis and Clark started on their expedition to plant the flag of the United States on the shores of the Pacific. In 1819 Florida was sold by Spain to the United States, whose territorial possessions in this way had been increased threefold in half a century. This last acquisition was so much a matter of course that it had been distinctly foreseen by the Count Aranda, then prime minister of Spain, as long ago as 1783.

"But even these momentous events were but the forerunners of new territorial revolutions still more stupendous. A dynastic struggle between the Emperor Napoleon and Spain, commencing in 1808, convulsed the peninsula. The vast possessions of the Spanish Crown on this continent—vice-royalties and captain-generalships, filling the space between California and Cape Horn—one after another, asserted their independence. No friendly power in Europe at that time was able, or, if able, was willing, to succor Spain, or aid her to prop the crumbling buttresses of her colonial empire. So far from it, when France, in 1823, threw an army of one hundred thousand men into Spain to control her domestic politics, England thought it necessary to counteract the movement by recognizing the independence of the Spanish provinces in America. In the remarkable language of the distinguished minister of the day, in order to redress the balance of power in Europe, he called into existence a New World in the West—somewhat overrating, perhaps, the extent of the derangement in the Old World, and not doing full justice

to the position of the United States in America, or their influence on the fortunes of their sister Republics on this continent.

"Thus, in sixty years from the close of the seven years' war, Spain, like France, had lost the last remains of her once imperial possessions on this continent. The United States, meantime, were, by the arts of peace and the healthful progress of things, rapidly enlarging their dimensions and consolidating their power.

"The great march of events still went on. Some of the new Republics, from the effect of a mixture of races, or the want of training in liberal institutions, showed themselves incapable of self-government. The province of Texas revolted from Mexico by the same right by which Mexico revolted from Spain. At the memorable battle of San Jacinto, in 1836, she passed the great ordeal of nascent states, and her independence was recognized by this Government, by France, by England, and other European powers. Mainly peopled from the United States, she sought naturally to be incorporated into the Union. The offer was repeatedly rejected by Presidents Jackson and Van Buren, to avoid a collision with Mexico. At last the annexation took place. As a domestic question, it is no fit subject for comment in a communication to a foreign minister; as a question of public law, there never was an extension of territory more naturally or justifiably made.

"It produced a disturbed relation with the Government of Mexico; war ensued, and in its results other extensive territories were, for a large pecuniary compensation on the part of the United States, added to the Union. Without adverting to the divisions of opinion which arose in reference to this war, as must always happen in free countries in reference to great measures, no person, surveying these events with the eye of a comprehensive statesmanship, can fail to trace in the main result the undoubted operation of the law of our political existence. The consequences are before the world. Vast provinces, which had languished for three centuries under the leaden sway of a stationary system, are coming under the influences of an active civilization. Freedom of speech and the press, the trial by jury, religious equality, and representative Government, have been carried by the Constitution of the United States, into extensive regions in which they were unknown before. By the settlement of California the great circuit of intelligence round the globe is completed. The discovery of the gold of that region—leading, as it did, to the same discovery in Australia—has touched the nerves of industry throughout the world. Every addition to the territory of the American Union has given homes to European destitution and gardens to European want. From every part of the United Kingdom, from France, from Switzerland and Germany, and from the extremest north of Europe, a march of immigration has been taken up such as the world has never seen before. Into the United States—grown to their present extent in the manner described—but little less than half a million of the population of the Old World is annually pour-

ing, to be immediately incorporated into an industrious and prosperous community, in the bosom of which they find political and religious liberty, social position, employment, and bread. It is a fact which would defy belief, were it not the result of official inquiry, that the immigrants to the United States from Ireland alone, besides having subsisted themselves, have sent back to their kindred, for the three last years, nearly five millions of dollars annually; thus doubling in three years the purchase-money of Louisiana.

"Such is the territorial development of the United States in the past century. Is it possible that Europe can contemplate it with an unfriendly or jealous eye? What would have been her condition, in these trying years, but for the outlet we have furnished for her starving millions?

"Spain, meantime, has retained of her extensive dominions in this hemisphere but the two Islands of Cuba and Porto Rico. A respectful sympathy with the fortunes of an ancient ally and a gallant people, with whom the United States have ever maintained the most friendly relations, would, if no other reason existed, make it our duty to leave her in the undisturbed possession of this little remnant of her mighty transatlantic empire. The President desires to do so; no word or deed of his will ever question her title or shake her possession. But can it be expected to last very long? Can it resist this mighty current in the fortunes of the world? Is it desirable that it should be so? Can it be for the interest of Spain to cling to a possession that can only be maintained by a garrison of twenty-five or thirty thousand troops, a powerful naval force, and an annual expenditure, for both arms of the service, of at least twelve millions of dollars? Cuba, at this moment, costs more to Spain than the entire naval and military establishment of the United States costs the Federal Government. So far from being really injured by the loss of this island, there is no doubt that, were it peacefully transferred to the United States, a prosperous commerce between Cuba and Spain, resulting from ancient associations and common language and tastes, would be far more productive than the best contrived system of colonial taxation. Such, notoriously, has been the result to Great Britain of the establishment of the independence of the United States. The decline of Spain from the position which she held in the time of Charles the Fifth is coeval with the foundation of her colonial system; while within twenty-five years, and since the loss of most of her colonies, she has entered upon a course of rapid improvement unknown since the abdication of that Emperor.

"I will but allude to an evil of the first magnitude: I mean the African slave-trade, in the suppression of which France and England take a lively interest—an evil which still forms a great reproach upon the civilization of Christendom, and perpetuates the barbarism of Africa, but for which it is to be feared there is no hope of a complete remedy while Cuba remains a Spanish colony.

"But, whatever may be thought of these last suggestions, it would seem impossible for any one who reflects upon the events glanced at this note to mistake the law of American growth and progress, or think it can be ultimately arrested by a convention like that proposed. In the judgment of the President, it would be as easy to throw a dam from Cape Florida to Cuba in the hope of stopping the flow of the Gulf stream, as to attempt, by a compact like this, to fix the fortunes of Cuba 'now and for hereafter'; or, as expressed in the French text of the convention, 'for the present as for the future' (*pour le présent comme pour l'avenir*), that is, for all coming time. The history of the past—the recent past—affords no assurance that twenty years hence France or England will even wish that Spain should retain Cuba; and a century hence, judging of what will be from what has been, the pages which record this proposition will, like the record of the family compact between France and Spain, have no interest but for the antiquary.

"Even now the President cannot doubt that both France and England would prefer any change in the condition of Cuba to that which is most to be apprehended, namely, an internal convulsion which should renew the horrors and the fate of San Domingo.

"I will intimate a final objection to the proposed convention. M. de Turgot and Lord Malmesbury put forward as the reason for entering into such a compact 'the attacks which have lately been made on the Island of Cuba by lawless bands of adventurers from the United States, with the avowed design of taking possession of that island.' The President is convinced that the conclusion of such a treaty, instead of putting a stop to these lawless proceedings, would give a new and a powerful impulse to them. It would strike a death-blow to the conservative policy hitherto pursued in this country toward Cuba. No administration of this Government, however strong in the public confidence in other respects, could stand a day under the odium of having stipulated with the great powers of Europe, that in no future time, under no change of circumstances, by no amicable arrangement with Spain, by no act of lawful war (should that calamity unfortunately occur), by no consent of the inhabitants of the island, should they, like the possessions of Spain on the American continent, succeed in rendering themselves independent; in fine, by no overruling necessity of self-preservation should the United States ever make the acquisition of Cuba.

"For these reasons, which the President has thought it advisable, considering the importance of the subject, to direct me to unfold, at some length, he feels constrained to decline respectfully the invitation of France and England to become a party to the proposed convention. He is persuaded that these friendly powers will not attribute this refusal to any insensibility on his part to the advantages of the utmost harmony between the great maritime states on a subject of such importance. As little will Spain draw any unfavorable inference from this refusal; the rather, as the emphatic disclaimer of any design

against Cuba on the part of this Government, contained in the present note, affords all the assurance which the President can constitutionally, or to any useful purpose, give of a practical concurrence with France and England in the wish not to disturb the possession of that island by Spain."

Mr. Everett, Sec. of State, to Mr. Sartiges, Dec. 1, 1852. MSS. Notes, France. This note was accepted by Mr. Marcy and Mr. Cass, succeeding Secretaries of State, as the basis of the policy of the Department in this line.

"Your dispatch of 16th February last to Mr. Crampton has lately appeared in our public papers. As it is in reality, if not in form, a reply to my letter of the 1st December, 1852, on the subject of Cuba, I regret that it was not prepared and sent before my retirement from the Department of State. But though I must now do it as a private individual, I feel as if it were to some extent my duty to answer it. I shall endeavor to do so in a manner consistent with my sincere respect for your public character, and a lively recollection of your personal kindness during my residence in England.

"Before remarking on the contents of your letter I will observe that, though it contains some courteous expressions, its tone is, upon the whole, not quite as conciliatory as might have been expected, considering that my letter of the 1st December was altogether respectful and friendly toward the two powers, both in form and in substance. I have heard that in presenting this correspondence to Parliament you indulged 'in some sarcastic remarks,' but I have not seen any report of them. Your dispatch is not free from a shade of sarcasm in one or two sentences. This I shall endeavor to avoid in reply, not that it would be difficult to follow you into that field, but because I cannot think that an encounter of wits between us would be an edifying spectacle, or one which would promote any desirable national object.

"You say that in my letter of the 1st December I entered into 'arguments not required by the simple nature of the question before me'; and the length of my letter has been complained of in other quarters. The question propounded to us was certainly in one sense simple, as every question is that can be answered 'Yes' or 'No.' But how various, complicated, and important the interests and relations involved in it! Besides, the organ of every Government must be the only judge of the proper length and relevancy of his replies to the communications of foreign powers. The proposal, to which I was returning an answer, jointly made by two of the leading powers of Europe, related to the most important subject in the circle of our foreign relations. I thought that a few paragraphs were well employed in unfolding the views of the President on this subject, and the reasons why he declined entering into a compact purporting to bind the three Governments for all coming time to a certain line of policy, in a case of so much importance.

"You will recollect that the members of our executive Government do not sit in Congress. Those expositions which are made in your Parliament by ministers—in speeches not unfrequently of two and three, sometimes four and five hours in length—must be made in this country in a Presidential message (rarely alluded to by your press without a sneer at its length), or an Executive report or dispatch. My letter of the 1st December would make a speech of about an hour, which does not seem to me immoderate for such a subject. However, a little greater fullness of statement and argument, in papers expected to come before

the public, is, it must be confessed, in harmony with the character of our Government, and is generally indulged in.

"You observe that 'the absorption or annexation of Louisiana in 1803, of Florida in 1819, of Texas in 1845, and of California in 1848, has not escaped the two powers; still less did they require to be reminded of the seven years' war, or of the American war.' But facts may be mentioned for illustration or argument as well as information. Most certainly the important and notorious events named by you—leading incidents of the history of the United States and of the world—cannot be supposed to have escaped the Governments of England and France, which were parties to some of the most important of the transactions in question. I had no thought of 'reminding' your Government of the events of the seven years' war and of the American Revolution as matters of historical fact of which they were ignorant; though I really doubt, and beg to say it without offense, whether there are many individuals in the Government of either country possessed of an accurate and precise knowledge of the facts hastily sketched by me. That sketch, however, of the territorial changes which have taken place on this continent during the last century was intended as an illustration of the proposition that our entire history shows it to be chimerical to attempt, in reference to specific measures, to bind up for all future time the discretion of a Government established in a part of the world of which so much is still lying in a state of nature.

"I had another motive. The public opinion of Christendom, created in a good degree by the press, has become an element of great and increasing influence in the conduct of international affairs. Now, it is very much the habit of a considerable portion of the European press to speak of the steady and rapid extension of the territory of the United States as the indication of a grasping spirit on the part of their Government and people. The subject is rarely alluded to by one school of transatlantic public writers for any other purpose. Thus the public mind of the civilized world is poisoned against us. There is not only manifested, on the part of these writers, an entire insensibility to the beauty and grandeur of the work that is going on—more beneficent, if possible, to Europe than to us, in the relief it is affording her—but we are actually held up at times as a nation of land pirates. It was partly my object to counteract this disposition; to show that our growth had been a natural growth; that our most important accessions of territory had taken place by great national transactions, to which England, France, and Spain had been parties, and in other cases by the operation of causes which necessarily influence the occupation and settlement of a new country, in strict conformity with the law of nations and not in violation of it.

"You say that 'it occurs to Her Majesty's Government to ask for what purpose are these arguments introduced, with so much preparation and urged with so much ability,' and you answer the question in the following manner: 'It would appear that the purpose, *not fully avowed but hardly concealed*, is to procure the admission of a doctrine that the United States have an interest in Cuba to which Great Britain and France cannot pretend.'

"Here a little unintentional injustice is done to my letter, in which it is distinctly stated more than once, for reasons set forth at length and very partially controverted by you, that the Government of the United States considered the condition of Cuba 'as mainly an American question,' in which they had a very deep interest and you a very limited one.

Not only was no attempt whatever made to conceal this doctrine, but it was fully avowed and reasoned out in my letter of the 1st December, 1852.

"To meet one of the chief grounds on which the United States rest this claim, that of geographical proximity, after some local allusions, of which I do not perceive the exact bearing, you observe, in effect, that Cuba is somewhat nearer to Jamaica than it is to the nearest part of the United States, and you consider this as showing that we cannot have a greater interest in the island than you have. Now, if Jamaica bore the same relation to Great Britain which our States on and near the Gulf of Mexico bear to the rest of the American Union, your reply to my argument would be good. But the direct reverse is the case. Jamaica is a distant colony, whose entire population (of which not more than one-tenth is of European origin) does not exceed that of an English city of the second class. It is, as I perceive from your speech of the 4th August, a burden on the imperial treasury. It must in its present state stand high on the list of the colonies, which (as appears from Lord Grey's recent work on the colonial policy of your administration) are regarded by more than one active and influential party in England as incumbrances of which she ought to get rid, if she could do so with credit. How different, in all respects, the case with the States lying on the Gulf of Mexico! In extent of sea-coast, in the amount of valuable products furnished to the world's commerce, in the command of rivers which penetrate the heart of the continent, they are a most important, as they are an integral portion of the Union. They are numerically all but a sixth part of it. The very illustration made use of by you strikingly confirms instead of confuting the doctrine that 'the condition of Cuba is mainly an American question.'

"This proposition could be enforced by other strong arguments besides those adduced in my letter of 1st December; but as those arguments, with the exception just commented upon, have not been met by you, I deem it unnecessary to enlarge upon the topic.

"But though the United States certainly consider that they have 'an interest in the condition of Cuba to which Great Britain and France cannot pretend,' it is not, either in my letter, nor in any other American state paper within my recollection, assumed that Great Britain and France have '*no* interest in the maintenance in the present *statu quo*, and that the United States *alone* have a right to a voice in the matter.' Our doctrine is, not that we have an absolutely exclusive interest in the subject, but that we have a far deeper and more immediate interest than France or England can possibly lay claim to. A glance at the map, one would think, would satisfy every impartial mind of this truth.

"In order to establish for France and England an equal interest with the United States in the condition of Cuba, you say: 'Great Britain is in possession, by treaty, of the Island of Trinidad, which, in the last century, was a colony of Spain. France was in possession at the commencement of this century of Louisiana by voluntary cession of Spain.' It is true that Spain was compelled by France to cede Trinidad to Great Britain by the treaty of Amiens. If, while this cession was in agitation—as it was for some time—the United States and any other neutral power (if there was any other), had exerted themselves to defeat it, and had invited you and France to bind yourselves by a perpetual compact never to acquire it, the interference, I apprehend, would have been regarded as worse than gratuitous. I cannot see why we have not as good a right to obtain, if we can, from Spain, the voluntary

cession of Cuba, as you had to accept the compulsory cession of Trinidad, which is, by position and strength, the Cuba of the southeastern Antilles.

"France was, as you say, at the beginning of this century in possession of Louisiana by the voluntary cession of Spain. This possession, however (nominal at best), did not take place till seven months after France had sold Louisiana to the United States for eighty millions of francs, and it lasted only from the 30th November to the 20th December, 1803. The object of France in acquiring Louisiana was to re-establish herself in the interior of this country; an object, I need not say, as menacing to your North American possessions as to the United States. Is it possible you can think such a possession of Louisiana for such a purpose a sufficient ground on the part of France for interfering with our relations with Cuba? May she, a European power, without consulting us, obtain from Spain in 1800 a cession of half the habitable portion of North America, a cession which threw her for fifteen hundred miles on our western frontier, and not only shut us out from the Pacific, but enabled her to close the Mississippi; and is it so very unreasonable in us to decline her invitation to bind ourselves for all time not to accept the cession of an island which lies within twenty-five leagues of our coast? Does she even derive her right thus to control our relations with Cuba in 1853 from her twenty days' possession of Louisiana in 1803? What can be clearer than that, whatever right accrued to her from that three weeks' possession (which was a mere ceremonial affair, to give form to the transfer of the province to the United States), must have passed to us by that transfer, followed by our actual possession and occupation for half a century?

"You observe that 'Lord Malmesbury and M. Turgot put forward, as a reason for entering into the proposed compact, the attacks which had been made on the Island of Cuba by lawless bands of adventurers from the United States, and with the avowed design of taking possession of that island,' and to this reason you add, 'Mr. Everett replies in these terms: 'The President is convinced that the conclusion of such a treaty, instead of putting a stop to these lawless proceedings, would give a new and powerful impulse to them,' and this argument you call 'not only unfounded but disquieting.'

"After acknowledging, rather coldly, I think, the conduct of the late President in disavowing and discouraging the lawless enterprises referred to, you reproachfully pronounce my remark just cited 'a melancholy avowal for the chief of a free state'; and you seem to intimate, without expressly saying so, that it implies, on the part of the people of the United States, an insensibility 'to the value of the eternal laws of right and wrong, of peace and friendship, and of duty to our neighbor, which ought to guide every Christian nation.' You also take occasion, in reference to the same remark, to impress upon the people of the United States 'the utility of those rules for the observance of international relations, which for centuries have been known to Europe by the name of the law of nations. Among the commentators on that law (you continue) some of the most distinguished American citizens have earned an enviable reputation, and it is difficult to suppose the United States would set the example of abrogating its most sacred provisions.'

"I suppose no one in Europe or America will think the intended force of this rebuke mitigated by the diplomatic reservation contained in the last two lines. Let us then inquire for a moment if it is well deserved.

"The expeditions to which you allude as calculated to excite the 'reprobation of every civilized state,' were discountenanced by the President in every constitutional and legal way. The utmost vigilance was at all times employed, but, unhappily for the adventurers themselves, without effect. In this there is matter neither for wonder nor reproach. The territory of the United States is but little less than the whole of Europe; while their population is not quite equal to that of the United Kingdom, and their standing military force small and scattered over an immensely extensive frontier. Our Government, like that of England, is one of law; and there is a great similarity between the laws of the two countries which prohibit military expeditions against the possessions of friendly powers. In fact, your foreign enlistment act of 1819 was admitted by Mr. Canning to have been founded in part on our neutrality law of the preceding year. Of the two, I believe our laws are the more stringent; but it is somewhat difficult to enforce them in both countries.

"These expeditions, got up in the United States by a Spanish general, and supposed to indicate a lawless disposition on the part of the American people, comprised a very small number of persons, some of whom were foreigners, enjoying the same freedom of action in the United States that refugees from every part of the continent enjoy in England. The same reproach which is cast upon us for these expeditions is at this moment cast upon England by the continental powers. Events which have occurred in London since your dispatch was written strikingly illustrate the difficulty and the risk, under constitutional Governments, of preventing abuses of that hospitality which it is the privilege and boast of such Governments to extend to all who seek it.

"There is, no doubt, widely prevalent in this country, a feeling that the people of Cuba are justly disaffected to the Government of Spain. A recent impartial French traveler, M. Ampère, confirms this impression. All the ordinary political rights enjoyed in free countries are denied to the people of that island. The Government is, in principle, the worst form of despotism, namely, absolute authority delegated to a military viceroy, and supported by an army from abroad. I speak of the nature of the Government, and not of the individuals by whom it is administered, for I have formed a very favorable opinion of the personal character of the present captain-general, as of one or two of his predecessors. Of the bad faith and the utter disregard of treaties with which this bad government is administered, your committees on the slave-trade have spoken plainly enough at the late session of Parliament. Such being the state of things in Cuba, it does not seem to me very extraordinary or reproachful that, throughout the United States, a handful of misguided young men should be found, ready to join a party of foreigners, headed by a Spanish General, who was able to persuade them, not as you view it, 'by armed invasion to excite the obedient to revolt and the tranquil to disturbance,' but, as they were led to believe, to aid an oppressed people in their struggle for freedom. There is no reason to doubt that there are, at this moment, as many persons, foreigners as well as natives, in England, who entertain these feelings and opinions as in the United States; and if Great Britain lay at a distance of one hundred and ten miles from Cuba, instead of thirty-five hundred, you might not, with all your repressive force, find it easy to prevent a small steamer, disguised as a trading vessel, from slipping off from an outport in the night on an unlawful enterprise. The expedition of General Torrijos, in 1831, as far as illegality is con

cerned, is the parallel of that of General Lopez. It was fitted out in the Thames, without interruption till the last moment, and though it then fell under the grasp of the police, its members succeeded in escaping to Spain, where, for some time, they found shelter at Gibraltar. It is declared, in the last number of the Quarterly Review, to be 'notorious that associations have been formed in London for the subversion of dynasties with which England is at peace; that arms have been purchased and loans proposed; that "central committees" issue orders from England, and that Messrs. Mazzini and Kossuth have established and preside over boards of regency for the Roman States and Hungary, and for the promotion of revolution in every part of the world.' I have before me a list, purporting to be taken from a Prussian police gazette, of fifteen associations of continental refugees organized in London, and now in action, for the above-mentioned purposes.

"When these things are considered, the fact that, in the course of four or five years, two inconsiderable and abortive efforts have been made from the United States, though deeply to be lamented and sternly to be condemned, as a violation of municipal and international law, does not appear to me so 'shocking' as it seems to be thought by you. It does not, in my judgment, furnish any ground for the reproaches it has drawn upon the Government and people of the United States. Nor does the remark in my letter of the 1st December, that a disposition to engage in such enterprises would be increased rather than diminished by our accession to the proposed convention, strike me as 'a melancholy avowal,' as you pronounce it, on the part of the President. You forget the class from which such adventurers are in all countries enlisted—the young, the reckless, the misinformed. What other effect could be expected to be produced on this part of the population by being told that their own Government, in disregard of the most obvious public interests as well as of the most cherished historical traditions, had entered into a compact with two foreign powers to guarantee the perpetuity of the system under which Cuba now suffers? Does not Lord Howden, the English minister at Madrid, make a very similar avowal in his letter of the 30th May last, addressed to the Spanish minister of foreign affairs, when he says, 'I cannot conclude without expressing my deep regret, that the course of Spain is such as to produce a general alienation in the opinion of the English public, out of which will most infallibly result a state of feeling *which no Government can control or oppose*?'

"The idea that a convention like that proposed was a measure naturally called for, in consequence of these lawless expeditions, seems to rest upon an entire misconception of the present state of the law in the United States, and of our treaty relations with Spain. Our treaties with that Government and the laws of the United States forbid all such enterprises. The tripartite convention would have added nothing to their unlawfulness. If we had been desirous of multiplying objections, we might well have complained that the acts of a very small number of rash young men, citizens and foreigners, should be put forward by two of the leading powers of Europe, as the main reason why we should be expected to enter into a strange compact with those powers, binding ourselves never to make a lawful and honorable acquisition of Cuba. There is no logical connection between the ideas, and there is something bordering upon the offensive in their association.

"Consider, too, the recent antecedents of the powers that invite us to disable ourselves to the end of time from the acquisition in any way of this natural appendage to our continent. France, within the past

century, to say nothing of the acquisition of Louisiana, has wrested a moiety of Europe from its native sovereigns; has possessed herself, by force of arms, and at the time greatly to the discontent of England, of six hundred miles of the northern coast of Africa, with an indefinite extension into the interior; and has appropriated to herself one of the most important insular groups of the Pacific. England, not to mention her other numerous recent acquisitions in every part of the globe, has, even since your dispatch of the 16th February was written, annexed half of the Burman Empire to her overgrown Indian possessions, on grounds—if the statements in Mr. Cobden's pamphlet are to be relied on—compared with which the reasons assigned by Russia for invading Turkey are respectable.

"The United States do not require to be advised of 'the utility of those rules for the observance of international relations which for centuries have been known to Europe by the name of the law of nations.' They are known and obeyed by us under the same venerable name. Certain circumstances in our history have caused them to be studied more generally and more anxiously here than in Europe. From the breaking out of the wars of the French revolution to the year 1812, the United States knew the law of nations only as the victims of its systematic violation by the great maritime powers of Europe. For these violation on the part of England, prior to 1794, indemnification was made under the seventh article of Jay's treaty. For similar injuries on the part of France, we were compelled to accept an illusory set-off under the convention of 1800. A few years only elapsed before a new warfare upon our neutral rights was commenced by the two powers. One hundred millions at least of American property were swept from the seas, under British orders in council, and the French, Berlin, and Milan decrees. These orders and decrees were at the time reciprocally declared to be in contravention of the law of nations by the two powers themselves, each speaking of the measures of the other party. In 1831, after the generation of the original sufferers had sunk under their ruined fortunes to the grave, France acknowledged her decrees to have been of that character by a late and partial measure of indemnification. For our enormous losses under the British orders in council, we not only never received indemnification, but the sacrifices and sufferings of war were added to these spoliations on our commerce and invasion of our neutral rights which led to its declaration. Those orders were at the time regarded by the Lansdownes, the Barings, the Broughams, and the other enlightened statesmen of the school to which you belong as a violation of right and justice as well as sound policy; and within a very few years the present distinguished lord chief justice, placed by yourself at the head of the tribunals of England, has declared that 'the orders in council were grievously unjust to neutrals, and *it is now generally allowed that they were contrary to the law of nations and our own municipal law!*'

"That I call, my lord, to borrow your expression, 'a melancholy avowal' for the chief of the jurisprudence of a great Empire, though highly creditable for the candor with which it is made. Acts of its sovereign authority, countenanced by its Parliament, rigidly executed by its fleets on every sea, enforced in the courts of admiralty by a magistrate whose learning and eloquence are among the modern glories of England, persisted in till the lawful commerce of a neutral and kindred nation was annihilated, and pronounced by the highest legal authority

of the present day contrary, not merely to the law of nations, but your own municipal law!

"Under these circumstances, the Government and people of the United States, who have never committed or sanctioned a violation of the law of nations against any other power, may well think it out of place that they should be instructed by an English minister in 'the utility of those rules which for centuries have been known to Europe by the name of the law of nations.'

"There are several other points in your dispatch, some of great public moment, which, if I were still in office, I should discuss on this occasion. I have, however, deemed it proper, at present, to confine myself to such remarks as seemed necessary to vindicate my letter of the 1st December from your strictures, leaving the new aspects of the case which your dispatch presents, especially in its opening and closing paragraphs, to those whose official duty it is to consider them.

"You will not, I hope, misapprehend the spirit in which this letter is written. As an American citizen, I do not covet the acquisition of Cuba, either peaceably or by force of arms. When I cast my thoughts back upon our brief history as a nation, I certainly am not led to think that the United States have reached the final limits of their growth, or, what comes to very much the same thing, that representative government, religious equality, the trial by jury, the freedom of the press, and the other great attributes of our Anglo-Norman civilization are never to gain a further extension in this hemisphere. I regard the inquiry under what political organization this extension is to take place, as a vain attempt to penetrate the inscrutable mysteries of the future. It will, if we are wise, be under the guidance of our example. I hope it will be in virtue of the peaceful arts by which well-governed states extend themselves over unsettled or partially settled continents. My voice was heard, at the first opportunity, in the Senate of the United States, in favor of developing the almost boundless resources of the territory already in our possession, rather than seeking to enlarge it by aggressive wars. Still I cannot think it reasonable—hardly respectful—on the part of England and France, while they are daily extending themselves on every shore and in every sea, and pushing their dominions, by new conquests, to the uttermost ends of the earth, to call upon the United States to bind themselves, by a perpetual compact, never, under any circumstances, to admit into the Union an island which lies at their doors, and commands the entrance into the interior of their continent."

Mr. Everett to Lord John Russell, Boston, Sept. 17, 1853, Pamph. Ed. See review by Mr. Trescot, in 9 South. Quar. Rev., N. S., Apr., 1854, 429.

On July 2, 1866, the chairman of the Committee on Foreign Affairs in the House of Representatives reported a bill to the effect, that when the Department of State should be officially informed that Great Britain and the several British provinces in Canada accepted the proposition of annexation, the President shall declare by proclamation that Nova Scotia, New Brunswick, Lower Canada, Upper Canada, and the territories of Selkirk, of Sasketchewan, and of Columbia should be admitted into the United States as States and Territories. (Amer. Ann. Encyclop., 1866, 78.) This resolution was not acted on, but on March 27, 1867, a resolution from the Committee on Foreign Affairs was passed in the House without opposition, to the effect that the people of the

United States regarded with extreme solicitude the confederation proposed on the northern frontier without the assent of the people of the provinces to be confederated, such a measure being likely to increase the embarrassment already existing between Great Britain and the United States.

Amer. Ann. Encyclop., 1867, 275. 2 Lawrence Com. sur droit int., 313.

It is not the policy of the United States to undertake in Africa the management of movements within the particular range of private enterprise.

Mr. Fish, Sec. of State, to Sir E. Thornton, Apr. 8, 1873. MSS. Notes, Gr. Brit.

"The policy of this Government, as declared on many occasions in the past, has tended toward avoidance of possessions disconnected from the main continent. Had the tendency of the United States been to extend territorial dominion beyond intervening seas, opportunities have not been wanting to effect such a purpose, whether on the coast of Africa, in the West Indies, or in the South Pacific. No such opportunity has been hitherto embraced, and but little hope could be offered that Congress, which must in the ultimate resort be brought to decide the question of such transmarine jurisdiction, would favorably regard such an acquisition as His Excellency proposes. At any rate, in its political aspect merely, this Government is unprepared to accept the proposition without subjection to such wishes as Congress and the people of the United States through Congress may see fit to express."

Mr. Frelinghuysen, Sec. of State, to Mr. Langston, June 20, 1883. MSS. Inst., Hayti.

"A conviction that a fixed policy, dating back to the origin of our constitutional Government, was considered to make it inexpedient to attempt territorial aggrandizement which would require maintenance by a naval force in excess of any yet provided for our national uses, has led this Government to decline territorial acquisitions. Even as simple coaling stations, such territorial acquisitions would involve responsibility beyond their utility. The United States have never deemed it needful to their national life to maintain impregnable fortresses along the world's highways of commerce. To considerations such as these prevailing in Congress the failure of the Samana lease and the St. Thomas purchase were doubtless due. During the years that have since elapsed there has been no evidence of a change in the views of the national legislature which would warrant the President in setting on foot new projects of the same character."

Mr. Frelinghuysen, Sec. of State, to Mr. Langston, Feb. 1, 1884. MSS. Inst., Hayti.

The proposed annexation of San Domingo is discussed, *supra*, §61; that of St. Thomas, *supra*, §61*a*.

the incorporation of remote interests with our own."

President Cleveland, First Annual Message, 1885.

CHAPTER IV.

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I. *EXECUTIVE, THE SOURCE OF DIPLOMATIC AUTHORITY.*

§ 78.

"A motion had been made in the Senate on the 5th of August, 1789, 'that it is the opinion of the Senate that their advice and consent to the appointment of officers should be given in the presence of the President.' This motion was postponed till the next day, when it was ordered 'that Mr. Izard, Mr. King, and Mr. Carroll be a committee to wait on the President of the United States, and confer with him on the mode of communication proper to be pursued between him and the Senate in the formation of treaties and making appointments to offices.' The committee accordingly waited on the President, and had the conference mentioned in the above letter. It does not appear, however, that the plan of communicating nominations orally was adopted in any instance, or that the President was ever present when they were considered by the Senate. (See appendix No. V.)

"In regard to treaties, a practice was at first begun which was not pursued. On the 21st of August, 1789, the following message was sent to the Senate, 'The President of the United States will meet the Senate in the Senate Chamber at half past 11 o'clock to-morrow, to advise with them on the terms of the treaty to be negotiated with the southern Indians.' He accordingly took his seat in the Senate, attended by General Knox, the Secretary of War, for two days in succession, when the outlines of a treaty proposed by the Secretary were discussed. But this practice, being found inconvenient and subject to various objections, particularly in regard to treaties with foreign powers, was soon discontinued. (Story's Commentaries, vol. iii, p. 371.)"

10 Washington's Writings, 25. Note by Sparks.

"The Constitution having declared that the President shall *nominate* and, by and with the advice and consent of the Senate, shall *appoint* embassadors, other public ministers, and consuls, the President desired my opinion whether the Senate has a right to negative the *grade* he may think it expedient to use in a foreign mission, as well as the *person* to be appointed.

"I think the Senate has no right to negative the *grade*."

Opinion of Mr. Jefferson, Apr. 24, 1790. 7 Jeff. Works, 465.

President Washington's message to the Senate of February 18, 1791, relative to the institution of a mission to Portugal, and nominating Mr. Humphreys thereto, will be found in 1 Am. State Papers, (For. Rel.) 127.

President John Adams's action, in sending, on February 18, 1798, without consulting his Cabinet, the nomination of Mr. William Vans Murray to the Senate, is told in 1 Schouler's History of the United States, 430.

On March 24, 1818, when the diplomatic appropriation bill came up before the House of Representatives, Mr. Clay took exception to the insertion in it of thirty thousand dollars for the payment of certain special commissioners sent by the President on a mission of urgency to the South American states. He insisted that if these commissioners were diplomatic agents, their nomination should have been sent to the Senate and by the Senate confirmed. The objection, however, was met by placing the appropriation under the head of incidental expenses. (See as to other details of this mission, *supra*, § 47.)

In President Monroe's Cabinet, on January 2, 1820, the question of sending ministers to the new South American states coming up, Mr. J. Q. Adams argued that "it is not consistent with our national dignity to be the first in sending a minister to a new power. It had not been done by any European power to ourselves." But receiving ministers "was, by our Constitution, an act of the Executive's authority. General Washington had exercised it in recognizing the French Republic by the reception of Mr. Genest [Genet]. Mr. Madison had exercised it by declining several years to receive, and by finally receiving, Mr. Onis."

4 J. Q. Adams' Mem., 206.

Concurrence by the Executive alone in the establishment of permanent international courts for the adjudication of questions arising out of the slave-trade, is not compatible with the limitations of the Constitution of the United States.

Mr. Adams, Sec. of State, to Mr. Stratford Canning, Dec. 30, 1820. MSS. Notes, For. Leg.

"It appears that the Senate have been discussing the precedents relating to the appointment of public ministers. One question is whether a public minister be an officer in the strict constitutional sense. If he is, the appointment of him must be authorized by *law*, not by the President and Senate. If, on the other hand, the appointment creates the office, the office must expire with the appointment, as an office created by law expires with the law; and there can be no difference between courts to which a public minister has been sent, and those to which one was sent for the first time. According to my recollection this subject was on some occasions carefully searched into, and it was found that the practice of the Government had from the beginning been regulated by the idea that the places or offices of public ministers and consuls existed under the law and usages of nations, and were always open to receive appointments as they might be made under competent authorities."

Mr. Madison to Mr. Monroe, President, May 6, 1822. MSS. Monroe Pap., Dept. of State. 3 Madison's Writings, 268.

The question of the right of the Senate to require, in reference to diplomatic nominations, documents which the Executive holds it inconsistent with public policy to disclose, was presented in various shapes in the proceedings of the Senate in 1826 in reference to the Panama mission. (See Sen. Doc. No. 423, 19th Cong., 1st sess.; 5 Am. State Pap. (For. Rel.), 834–870.) The same question was acted on on the first session of the Forty-ninth Congress, (1886) President Cleveland declining to acknowledge the Senate's right to require such production.

As to duties and need of U. S. ministers to foreign countries, see 7 John Adams's Works, 208, 257, 263, 317; 8 *ibid.*, 37, 96, 150, 381, 499; 9 *ibid.*, 513, 521.

A report by Mr. Patterson, of New Hampshire, on the character of our foreign service, made July 2, 1868, is given in Senate Rep. Com. No. 154, 40th Cong., 2d sess.

That representatives of this Government must be citizens of the United States, see *infra*, § 113.

The proceedings connected with the appointment, in 1847, of Mr. Trist, as confidential agent to Mexico, are given, *infra*, § 154.

In October, 1861, Mr. Seward, with the approval of the President and the Cabinet, determined to send to Europe, as a confidential but secret mission, for the purpose of acting, so far as possible, on public sentiment in respect to the then civil war, certain eminent citizens who, however, were to receive no compensation beyond payment of their expenses, and were not to deal distinctively with any foreign Government, nor to assume in any way diplomatic functions. The gentlemen selected for the purpose were Archbishop Hughes, Bishop McIlvaine, Mr. Everett, Mr. Winthrop, and Mr. J. P. Kennedy. The two first named proceeded at once on the mission. The others were ready to follow, if *this* was thought necessary by the Government, asking for a few days' delay for preparation. In the mean time, more favorable advices from England having arrived, they were relieved by Mr. Seward from the duty. Archbishop Hughes and Bishop McIlvaine, however, entered on the service, though no letters to or from them are on file in the State Department, nor is any record of their appointment there to be found.

See Thurlow Weed's Autobiography, 634; and fuller statement as to details, in 4 Winthrop's Addresses, &c., 500.

The Secretary of State has no power to appoint a commission to determine how much money a foreign prince shall pay to counsel in the United States for professional services.

6 Op., 386, Cushing, 1854.

The President, under the Constitution, has power to appoint diplomatic agents of any rank, at any place, and at any time, subject to the constitutional limitations in respect to the Senate. The authority to make such appointments is not derived from, and cannot be limited by, any act of Congress, except in so far as appropriations of money are required to provide for the expenses of this branch of the public service. During the early administrations of the Government, the appropriations made for the expenses of foreign intercourse were to be expended in the discretion of the President, and from this general fund ministers whom the President saw fit to name were paid. Congress, in any view, cannot require that the President shall make removals or reappointments or new appointments of public ministers at a particular time, nor that he shall appoint or maintain ministers of a prescribed rank, at particular courts. It was therefore held that where the act of 1855 (10 Stat., 619) declared that from and after the end of the present fiscal year the President shall appoint envoys, &c., this was not to be construed to mean that the President was required to make any such appointments,

but only to determine what should be the salaries of the officers in case they have been or shall be appointed.

7 Op. 186 (Cushing), 1855.

As to power of appointment in place of suspended diplomatic agents, under tenure of office act, see Revised Statutes, §§ 1767 *ff.*

Spanish viceroys, governors, and captains-general have generally been invested with the *jus legationis.*

7 Op., 551, Cushing, 1855.

II. *FOREIGN MINISTERS TO RECOGNIZE THE SECRETARY OF STATE AS SOLE ORGAN OF THE EXECUTIVE.*

§ 79.

"There is no maxim more clearly settled in all courts, and in all negotiations between nations, than that sovereign should always speak to sovereign and minister to minister. I am not at all surprised, therefore, although I am much mortified, at having my memorials to their High Mightinesses, and to His Most Serene Highness, returned to me, with the letter inclosed from Mr. Fagel. I should have had a letter of recall, signed by the President of Congress, by their order, and addressed to their High Mightinesses. There is a similar irregularity in my recall from the British court; for, although my commission is limited to three years, yet my letter of credence to His Majesty has no limits at all. If the omission of a letter from Congress to the King, upon this occasion, should not be taken as an offense, it will not be because it is not observed, but from motives too humiliating to Congress, as well as their minister here, to be explained."

Mr. Adams to Mr. Jay, Feb. 16, 1788. 8 John Adams' Works, 478.

"Minutes of a conversation between Mr. Jefferson, Secretary of State, and M. Genet:

"JULY 10, 1793.

* * * "He asked if they (Congress) were not the sovereign. I told him no, they were sovereign in making laws only, the Executive was sovereign in executing them, and the judiciary in construing them where they related to their department. 'But,' said he, 'at least Congress are bound to see that the treaties are observed.' I told him no; there were very few cases, indeed, arising out of treaties which they could take notice of; that the President is to see that treaties are observed. 'If he decides against the treaty, to whom is a nation to appeal?' I told him the Constitution had made the President the last appeal. He made me a bow, and said that indeed he would not make me his compliments on such a Constitution, expressed the utmost astonishment at it, and seemed never before to have had such an idea.

"He was now come into perfect good humor and coolness, in which state he may with the greatest freedom be spoken with. I observed to him the impropriety of his conduct in persevering in measures contrary to the will of the Government, and that too within its limits, wherein unquestionably they had a right to be obeyed. 'But,' said he, 'I have a right to expound the treaty on our side.' 'Certainly,' said I, 'each party has an equal right to expound their treaties. You, as the agent of your nation, have a right to bring forward your exposition, to sup-

port it by reasons, to insist on it, to be answered with the reasons for our exposition where it is contrary; but when, after hearing and considering your reasons, the highest authority in the nation has decided, it is your duty to say you think the decision wrong, that you cannot take upon yourself to admit it, and will represent it to your Government to do as they think proper; but, in the mean time, you ought to acquiesce in it, and to do nothing within our limits contrary to it.'"

10 Washington's Writings, 537.

"He (the President) being the only channel of communication between the country and foreign nations, it is from him alone that foreign nations or their agents are to learn what is or has been the will of the nation, and whatever he communicates as such they have a right and are bound to consider as the expression of the nation; and no foreign nation can be allowed to question it, (nor) to interpose between him and any branch of government, under the pretense of either's transgressing their functions, nor to make himself the umpire and final judge between them."

Mr. Jefferson, Sec. of State, to Mr. Genet, Nov. 22, 1793; 1 Waite's St. Pap., 198; 1 Am. St. Pap. (For. Rel.), 184.

"A foreign minister has a right to remonstrate *with the executive* to whom he is accredited, upon any of those measures affecting his country. But it will ever be denied as a right of a foreign minister, that he should endeavor, by an address to the people, oral or written, to forestall a depending measure, or to defeat one which has been decided."

Mr. Randolph, Sec. of State, to Mr. Fauchet, June 13, 1795. MSS. Notes, For. Leg.

That it is an impropriety for foreign ministers to publish criticisms on the Government to which they are accredited, see 1 J. Q. Adams Memoirs, 410.

A foreign minister has no right to take official notice of informal remarks made by the President at one of his "drawing-rooms."

"What right had Mr. Onis to speak upon this matter to the President at the drawing-room at all? He was treating with me. I had sent him a copy of my full powers, and received the copy of his. The Secretary of State was the officer with whom the negotiation was to be conducted, and all applications to the President by Mr. Onis concerning it were improper."

4 J. Q. Adams Mem., 269.

Even though the Globe, as published during the administration of President Jackson, should be regarded as a government paper, the Government "is and can be from the nature of our institutions only answerable for official articles; on all the rest the Globe is as independent of the Executive as any other gazette." Hence, the Government, as such, cannot be properly called on by Russia to explain the insertion of articles in the Globe injurious to Russia in relation to Poland, or the pub-

lication of what Russia may consider inaccurate and unjust reports from France or England of Russian affairs.

Mr. Livingston, Sec. of State, to Mr. Buchanan, Jan. 2, 1833. MSS. Inst., Russia. See also 1 Curtis' Buchanan, 175.

"The first reflection produced by Mr. Serurier's note is that it brings into discussion the propriety of a message of the President to Congress, for the contents of which, until the recommendations it contains are adopted by Congress, the United States are not responsible to foreign Governments. If, in the performance of his constitutional duty, the President had recommended a declaration of war against France, it is to be presumed that France would not have made war upon the United States, until Congress, to whom exclusively belongs the power, had decided to declare war against her, and however prudence would have required a preparation, or even action, on her part, the French Government would scarcely have expected to make it a subject of diplomatic discussion. As one of its branches, the Chief Magistrate, in his messages, commits the Government to foreign nations no more than the two houses of Congress can, by their separate action, and it would be a most extraordinary movement of the foreign power to discuss the resolutions of either house of Congress, or of both, if passed by less than two-thirds, and not approved by the President, as if those resolutions were causes of complaint against the United States, to be subjects of discussion with the Executive. The President corresponds with foreign Governments, through their diplomatic agents, as the organ of the nation. As such he speaks for the nation. In his messages to Congress he speaks only for the Executive to the legislature. He recommends, and his recommendations are powerless, unless followed by legislative action. No discussion of them can be permitted. All allusions to them, made with a design to mark an anticipated or actual difference of opinion between the Executive and legislature, are indelicate in themselves, and if made to prejudice public opinion, will immediately recoil upon those who are so indiscreet as to indulge them. If they contain anything injurious to foreign nations, the means of self-justification are in their own power without interposing between the different branches of this Government—an interposition which can never be made, even by those who do not comprehend the true character of the Government and the people of the United States, without forfeiting the respect of both."

Mr. Forsyth, Sec. of State, to Mr. Livingston, Mar. 5, 1835. MSS. Inst., France. See *infra*, § 318.

When the French Government, in 1835, made the payment of the French spoliation indemnity depend upon an explanation being offered of President Jackson's message of December, 1834, reflecting on the course of France (see *infra*, § 318), Mr. Edward Livingston, then min-

ister at Paris, addressed to the Duc de Broglie, French minister for foreign affairs, a note in which is the following:

"The President, as the chief executive power, must have a free and entirely unfettered communication with the co-ordinate powers of the Government. As the organ of intercourse with other nations, he is the only source from which a knowledge of our relations can be conveyed to the legislative branches. It results from this that the utmost freedom from all restraint, in the details into which he is obliged to enter of international concerns and of the measures in relation to them, is essential to the proper performance of this important part of his functions. * * * Were any foreign powers permitted to scan the communications of the Executive, their complaints, whether real or affected, would involve the country in continual controversies; for, the right being acknowledged, it would be a duty to exercise it by demanding a disavowal of every phrase they might deem offensive, and an explanation of every word to which an improper interpretation could be given. The principle, therefore, has been adopted, that no foreign power has a right to ask for explanations of anything that the President, in the exercise of his functions, thinks proper to communicate to Congress, or of any course he may advise them to pursue. This rule is not applicable to the Government of the United States alone, but, in common with it, to all those in which the constitutional powers are distributed into different branches. No such nation, desirous of avoiding foreign influence or foreign interference in its councils—no such nation, possessing a due sense of its dignity and independence, can long submit to the consequences of this interference. * * * If the principle is correct, every communication which the President makes, in relation to our foreign affairs, either to the Congress or to the public, ought in prudence to be previously submitted to those ministers, in order to avoid disputes and troublesome and humiliating explanations."

Hunt's Life of Livingston, 401, 402.

Communications of the President to Congress and the debates of Congress are domestic matters, concerning which this Department will not entertain the criticisms or answer the questions of foreign sovereigns.

Mr. Buchanan, Sec. of State, to Mr. Rosa, Feb. 15, 1849. MSS. Notes, Mex.

A foreign minister, accredited to the United States, has no right to "ask explanations from the President concerning the debates or proceedings of Congress, or any message which he may transmit to either house in the exercise of his constitutional power and duty. In a note to M. de la Rosa, minister of Mexico, from Mr. Buchanan, Secretary of State, February 15, 1849, it is said: "So far as regards the debates or proceedings of Congress, this is the first occasion on which it has become necessary to address the representative of any foreign Government. Not so in relation to the messages of the President to Congress. Mr. Castillo, one of your predecessors, in a note of the 11th of December, 1835, to Mr. Forsyth, the Secretary of State, called upon him for an explanation of the meaning of a paragraph, relating to Mexico, contained in President Jackson's annual message to Congress, of December, 1835. Mr. Forsyth, in his answer of 16th December, 1835, told Mr. Castillo that 'remarks made by the President in a message to Congress are not deemed a proper subject upon which to enter into explanation with the representative of a foreign Government.' Mr. Livingston, then our minister to France, on 13th of January, 1835, informed the French minister

of foreign affairs that in the message of President Jackson to Congress of the previous December, 'there was nothing addressed to the French nation': and he likened it very properly to a proceeding well known in French law—a family council, in which their concerns and interests are discussed, but of which, in our case, the debates were necessarily public." (Annual message of the President, &c., 1849–'50, part 1, p. 71.)

"Mr. Webster, Secretary of State, wrote to the same Mexican minister, February 21, 1851: 'The undersigned flattered himself that after the expression of the sentiments of the Government contained in the note of Mr. Buchanan to M. de la Rosa, of 15th February, 1849, M. de la Rosa would have abstained from making a message of the President to either house of Congress a subject of diplomatic representation."

Lawrence's Wheaton (ed. 1863), 385.

The President's communications to Congress are matters of domestic concern which are not within the range of the official notice of foreign sovereigns.

Mr. Webster, Sec. of State, to Mr. Hülsemann, Dec. 21, 1850. MSS. Notes, Germ. St. See, for this letter in full, *supra*, § 47.

"The President's annual message is a communication from the Executive to the legislative branch of the Government; an internal transaction, with which it is not deemed proper or respectful for foreign powers or their representatives to interfere, or even to resort to it as the basis of a diplomatic correspondence. It is not a document addressed to foreign Governments."

Mr. Marcy, Sec. of State, to Mr. Herran, Dec. 22, 1856. MSS. Notes, Colombia. To same effect see Mr. Fish, Sec. of State, to Mr. Preston, Dec. 12, 1870. MSS. Notes, Hayti.

During Mr. Buchanan's administration, in 1857, he held certain "confidential conferences" with Lord Napier on questions concerning Central America. The misunderstandings that followed these interviews (see Lord Napier to General Cass, Apr. 12, 1858; Br. and For. St. Pap., 1857–'58, vol. 48, 651) are further illustrations of the wisdom of the position taken by Mr. Monroe, and followed by other Presidents, to hold no official intercourse with foreign ministers except through the Secretary of State, the Secretary's action not binding the Governments concerned unless when in the shape of notes or of reports of interviews reduced to writing and assented to by both parties. As further illustrations of the position above stated, see Lord Napier's report of Mr. Buchanan's informal talk in British and Foreign State Papers, *ut supra*, 755. See also as to danger of oral communication, *infra*, § 89*b*.

"This Department is the legal organ of communication between the President of the United States and foreign countries. All foreign powers recognize it and transmit their communications through it, through the dispatches of our ministers abroad, or their own diplomatic representatives residing near this Government. These communications are submitted to the President, and, when proper, are replied to under his direction by the Secretary of State. This mutual correspondence is recorded and preserved in the archives of this Department. This is, I

believe, the same system which prevails in the Governments of civilized states everywhere."

Mr. Seward, Sec. of State, to Mr. Dayton, June 27, 1862. MSS. Inst., France.

"At the same time I think it proper to suggest to you that all correspondence between diplomatic and consular agents of the United States residing in foreign countries is conducted, under the law of nations, confidentially, with amenability only to the Government of the United States."

Mr. Seward, Sec. of State, to Mr. Sullivan, Oct. 25, 1867. MSS. Dom. Let.

"It is neither convenient nor customary with the Executive department to discuss or give explanations concerning the expressions of opinions which are made in incidental debates and resolutions from time to time in either or both of the legislative bodies, at least until they assume the practical form of law. When they assume that form they are constitutionally submitted to the President for his consideration, and he is not only entitled, but he is obliged to announce his concurrence or non-concurrence with the will of the legislature. (See *infra*, § 107.)

"It would not be becoming for me to entertain correspondence with a foreign state concerning incidental debates and resolutions in regard to the treaty for the two Danish islands while it is undergoing constitutional consideration in the Senate and in Congress."

Mr. Seward, Sec. of State, to Mr. Yeaman, Jan. 2, 1868. MSS. Inst., Denmark. As to this negotiation, see *supra*, § 61 *a*.

"Your dispatch No. 14, of the 8th ultimo, has been received. The view is correct which it takes of the absurd newspaper report of a letter from President Grant to the Emperor of Russia, congratulating the latter upon his denunciation of the clause of the treaty of Paris which restricts liberty of navigation in the Black Sea. The occasions are rare which are conceived to warrant or require a deviation on the part of the President from the rule which limits his communications to foreign sovereigns to mere letters of ceremony. The occasion adverted to was *not* deemed sufficient to call for any such communication. It is true that the United States, not having been a party to the treaty of Paris, may have more or less reason to complain of any curtailment of their rights under the law of nations which it may have effected. No formal complaint on the subject, however, has as yet been addressed to either of the parties to that instrument, though the restriction which it imposes on the right of our men-of-war to the passage of the Dardanelles and the Bosphorus is under serious consideration."

Mr. Fish, Sec. of State, to Mr. McVeagh, Jan. 5, 1871. MSS. Inst., Turkey; For. Rel., 1871.

Correspondence by a foreign minister with the press in this country on subjects connected with his mission, such correspondence involving

an appeal to the people on diplomatic issues, is ground for his dismissal.

Mr. Fish, Sec. of State, to Mr. Curtin, Nov. 16, 1871. MSS. Inst., Russia. See *infra*, § 82.

Official communications with the President can be only through the Secretary of State.

Mr. Fish, Sec. of State, to Mr. Washburne, June 19, 1873. MSS. Inst., France.

"It is not regular for any other authority than that of the department of foreign affairs in the country where diplomatists are accredited to address letters upon public business directly to them. When such other authority has occasion to communicate with them, this is invariably done through the department intrusted with the foreign relations of the country."

Mr. Fish, Sec. of State, to Mr. Cox, Jan. 22, 1874. MSS. Dom. Let.

The opinion of the Attorney-General of the United States cannot be taken officially by a diplomatic representative of the United States except through the medium of the Secretary of State.

Mr. Fish, Sec. of State, to Mr. Jay, Aug. 2, 1874. MSS. Inst., Austria.

"The policy of the law is to prohibit all communication with private and unofficial persons on subjects under discussion between this Government and another. Such communication can be made verbally by trusted messengers, as much to the detriment of the public service and the public interest, and in as complete disregard of the policy and the letter of the statute, as it can by written correspondence. It may even be more dangerous to intrust it to the memory or even the fidelity of a messenger than to the exact words of a written communication."

Mr. Fish, Sec. of State, to Mr. Bassett, Nov. 20, 1875. MSS. Inst., Hayti.

Prince Bismarck, having declined to be "the medium of communication between the House of Representatives of the United States and the Reichstag of a resolution on the subject of the death of Mr. Lasker" (a late member of that body, who died in New York), Mr. Frelinghuysen, Secretary of State, in a telegram to Mr. Sargent, minister to Berlin, after explaining the friendly intent of the resolution, stated that "its non-transmission officially, as it was intended and claimed on its face to be of friendly intent, while a matter of regret, is not one of concern to either branch of the Government of the United States."

Mr. Frelinghuysen to Mr. Sargent, Mar. 10, 1884. MSS. Inst., Germ.

A foreign minister here is to correspond with the Secretary of State on matters which interest his nation, and ought not to be permitted to resort to the press. He has no authority to communicate his sentiments to the people by publications, either in manuscript or in print, and any attempt to do so is contempt of this Government. His inter

course is to be with the Executive of the United States only, upon matters that concern his mission or trust.

1 Op., 74, Lee, 1797. See *infra*, § 84.

That interference by a foreign minister in the politics of the country of his mission is a breach of duty, see *infra* §§ 84, 106.

III. *CONTINUITY OF FOREIGN RELATIONS UNBROKEN BY PARTY CHANGES.*

§ 80.

Whatever may be the changes in the persons directing at home and abroad our foreign relations, the Department maintains a continuity in the traditions and management of the office; nor will it permit an appeal, based on party changes, to be made either to or from foreign representatives. (See 8 J. Q. Adams' Mem., 264.)

This course was taken by Mr. Webster and Mr. Marcy in connection with the action of Mr. Clayton in sending Mr. Mann to Hungary. (*Supra*, §§ 47 *ff.*)

How far a Secretary of State can disclaim the action of his predecessor was discussed when the nomination of Mr. Van Buren came before the Senate in 1832. Mr. Van Buren, when Secretary of State, had said, in instructions to Mr. McLane, that "in reviewing the causes which have preceded and more or less contributed to a result so much regretted (the refusal of Great Britain to modify the restrictions on the trade between the United States and the West Indies), there will be found three grounds upon which we are most assailable: (1) In our too long and too tenaciously resisting the right of Great Britain to impose protecting duties in her colonies; (2) in not relieving her vessels from the restrictions of returning direct from the United States to the colonies after permission had been given by Great Britain to our vessels to clear out from the colonies to any other than British port; and (3) in omitting to accept the terms offered by the act of Parliament of July, 1825." It was argued that these instructions were a reflection on the preceding Administration (that of Mr. J. Q. Adams), and this was one of the chief grounds for the rejection of Mr. Van Buren by the Senate, Mr. Calhoun, Vice-President, giving the casting vote against it. It afterwards transpired that these instructions were drawn from a dispatch of Mr. Gallatin sent to the State Department in the last year of Mr. Adams's administration.

1 Benton's Thirty Years in the Senate, 216.

IV. *EXECUTIVE DISCRETION DETERMINES THE WITHDRAWAL OR RENEWAL OF MISSIONS AND MINISTERS.*

§ 81.

"It is necessary for America to have agents in different parts of Europe, to give some information concerning our affairs, and to refute the abominable lies that the hired emissaries of Great Britain circulate in every corner of Europe, by which they keep up their own credit and ruin ours. I have been more convinced of this since my peregrinations

in this country than ever. The universal and profound ignorance of America here has astonished me. It will require time and a great deal of prudence and delicacy to undeceive them."

Mr. J. Adams to Mr. Franklin, Oct. 14, 1780. 7 John Adams' Works, 317.

"In the same manner, or at least for similar reasons, as long as we have any one minister abroad at any European court, I think we ought to have one at every one to which we are most essentially related, whether in commerce or policy; and, therefore, while we have any minister at Versailles, the Hague, or London, I think it clear we ought to have one at each, though I confess I have sometimes thought that after a very few years it will be the best thing we can do to recall every minister from Europe, and send embassies only on special occasions."

Mr. J. Adams to Mr. Livingston, Feb. 5, 1783. 8 John Adams' Works, 37.

"The Chevalier de Pinto informs me that he has written to his court for explanations upon some points, and expects an answer in a few days. When it arrives, he will call upon me. In the mean time, he says his court is solicitous to send a minister to America, but that etiquette forbids it, unless Congress will agree to send one to Lisbon. They would send a minister to New York, if Congress would return the compliment; but if Congress will not send a minister plenipotentiary, they wish to send a resident or even a chargé d'affaires, but etiquette will not permit this, unless Congress will send a resident or chargé d'affaires to Portugal."

Mr. J. Adams to Mr. Jefferson, Jan. 19, 1786. 8 John Adams' Works, 367.
As to mode of recalling foreign ministers, see 8 John Adams' Works, 473, 478.

On October 13, 1789, Gouverneur Morris, then in Paris, was asked by General Washington to proceed to London as a private agent, and, "on the authority and credit of this letter, to converse with His Britannic Majesty's ministers" as to a treaty of commerce with the United States.

10 Washington's Writings, 43.

Gouverneur Morris, when unofficial agent for President Washington in London, in 1790, said, in a letter to President Washington, on May 29, 1790, that he informed Mr. Pitt and the Duke of Leeds that "we could not appoint any minister, they so much neglected the former appointment. He asked me whether we would appoint a minister if they would? I told him I could almost promise that we should, but was not authorized to give any positive assurance."

1 Am. St. Pap. (For. Rel.), 124.

"Negotiation, in the present state of things, is attended with peculiar difficulties. As the King of Great Britain twice proposed to the United States an exchange of ministers, once through Mr. Hartley and once through the Duke of Dorset, and when the United States agreed to the proposition, flew from it; to send a minister again to St. James till that court explicitly promises to send one to America is a humiliation to which the United States ought never to submit. A remonstrance from sovereign to sovereign cannot be sent but by an embassador of some sort or other; from minister of state to minister of state it might be transmitted in many ways. A remonstrance in the form of a letter from the American minister of state to the Duke of Leeds, or

whoever may be secretary of state for foreign affairs, might be transmitted through an envoy, minister plenipotentiary, or embassador of the President of the United States at Paris, Madrid, or the Hague, and through the British embassador at either of those courts. The utmost length that can now be gone, with dignity, would be to send a minister to the court of London, with instructions to present his credentials, demand an audience, make his remonstrance; but to make no establishment, and demand his audience of leave and quit the kingdom in one, two, or three months if a minister of equal degree were not appointed and actually sent to the President of the United States from the King of Great Britain."

Vice-President Adams to President Washington, Aug. 29, 1790. 8 John Adams's Works, 499.

As to recall of Mr. Monroe and appointment of Mr. C. C. Pinckney as minister to France in 1796, see *infra*, § 85.

"Persevering in the pacific and humane policy which had been invariably professed and sincerely pursued by the excutive authority of the United States, when indications were made on the part of the French Republic of a disposition to accommodate the existing differences between the two countries, I felt it to be my duty to prepare for meeting their advances by a nomination of ministers, upon certain conditions which the honor of our country dictated, and which its moderation had given it a right to prescribe. *The assurances which were required of the French Government previous to the departure of our envoys have been given, through their minister of foreign relations, and I have directed them to proceed on their mission to Paris.* They have full power to conclude a treaty, subject to the constitutional advice and consent of the Senate. The characters of these gentlemen are sure pledges to their country that nothing incompatible with its honor or interest, nothing inconsistent with our obligations of good faith or friendship to any other nation, will be stipulated."

Third Annual Address of President John Adams, 1799.

As to institution of special missions, see *supra*, § 47.

As to conditions imposed by France, see *infra*, § 83.

"I had twenty times answered these arguments by saying that there was no such etiquette [as that requiring exchange of ministers]. It was true that in ancient and more barbarous times, when nations had been inflamed by long wars, and the people wrought up to a degree of fury on both sides, so as to excite apprehensions that embassadors would be insulted or massacred by the populace, or even imprisoned, as in Turkey, sovereigns had insisted that ambassadors should be exchanged, and that one should be held as a hostage for the other. It had even been insisted that a French ambassador should embark at Calais at the same hour that an English ambassador embarked at Dover. But these times were passed. Nations sent ambassadors now as they pleased. Franklin and his associates had been sent to France; Mr. Jay had been sent to Spain; I had been sent to Holland; Mr. Izard had been commissioned to Tuscany; Mr. W. Lee to Vienna and Berlin, without any

stipulation for sending ministers in return. We had a minister in London three years without any minister from England in return. We have had a minister at Berlin without any from Prussia."

9 John Adams's Works, 271. (Patriot Letters, No 10.)

The British ministry having held back the appointment of a minister to the United States, at a very critical period, for some months after Mr. Jackson, at the request of the Government of the United States, had been recalled, Mr. Pinkney, then representing the United States at London, on January 14, 1811, wrote as follows to Lord Wellesley:

"After a lapse of many months since I had the honor to receive and convey to my Government your lordship's repeated assurances, written as well as verbal (which you declined, however, to put into an official form), 'that it was your intention *immediately* to recommend the appointment of a minister plenipotentiary from the King to the United States,' the British Government continues to be represented at Washington by a chargé d'affaires, and no steps whatever appear to have been taken to fulfill the expectation which the above-mentioned assurances produced and justified.

"In this state of things, it has become my duty to inform your lordship, in compliance with my instructions, that the Government of the United States cannot continue to be represented here by a minister plenipotentiary.

"As soon, therefore, as the situation of the King's Government will permit, I shall wish to take my leave, and return to America, in the United States frigate Essex, now at Plymouth; having first named, as I am specially authorized to do, a fit person to take charge of the affairs of the American legation in this country."

The following correspondence then ensued:

"I received at a very late hour last night two notes from Lord Wellesley (bearing date 'February 15, 1811'), of which copies, marked No. 1 and No. 2, are inclosed. Taken together (as of course they must be), they announce the appointment of Mr. Foster as envoy extraordinary and minister plenipotentiary to the United States, and set forth the reasons why an appointment has been so long delayed.

"You will perceive, in the second and third paragraphs of the unofficial paper, a distinct disavowal of the offensive views which the appointment of a mere chargé d'affaires and other circumstances appeared originally to indicate.

"We are now told in writing that the delay in appointing a minister plenipotentiary was occasioned, *in the first instance*, not by any such considerations as have been supposed, but 'by an earnest desire of rendering the appointment satisfactory to the United States and conducive to the effectual establishment of harmony between the two Governments'; that, more recently, 'the state of His Majesty's Government rendered it impossible to make the intended appointment,' and that Lord Wellesley was, therefore, 'concerned to find, by my letter of the 14th of January, that the Government of the United States should be induced to suppose that any indisposition could exist, on the part of His Majesty's Government, to place the British mission in America on the footing most acceptable to the United States as soon as might be practicable, consistently with the convenience of affairs in this country.

"The two papers are evidently calculated to prevent me from acting upon my late request of an audience of leave; and they certainly seem

to put it in my power, if they do not make it my duty, to forbear to act upon it.

"I have it under consideration (looking to the instructions contained in your letter of the 15th of November) what course I ought to pursue. It is at any rate my intention to return to America in the Essex, as I shall doubtless have the President's permission to do in consequence of my letter to you of the 24th of November."

Mr. Pinkney to Mr. Smith, Sec. of State, Feb. 16, 1811. 3 Am. St. Pap. (For. Rel.), 412.

"The result of my reflections on Lord Wellesley's two communications of the 15th instant will be found in my letter to him of yesterday's date, of which I now transmit a copy.

"It appeared to me that the appointment of a minister plenipotentiary to the United States was nothing, or rather worse than nothing, if the orders in council were to remain in force, the blockade of May, 1806, to be unrepealed, the affair of the Chesapeake to continue at large, and the other urgent questions between us to remain unsettled.

"The 'posture of our relations,' as you have expressed it in your letter of the 15th of November, would not be 'satisfactorily changed' merely by such an appointment; and, of course, my functions could not be resumed upon the sole foundation of it.

"I have put it to Lord Wellesley to say explicitly whether full and satisfactory arrangement is intended, before I answer his official letter concerning my audience of leave. If he is prepared to do at once what we require, or to instruct the new minister to do at Washington what does not demand immediate interference here, I shall think it my duty to forbear to take leave on the 26th instant. If he declines a frank reply, or refuses our demands, I shall press for my audience, and put an end to my mission."

Mr. Pinkney to Mr. Smith, Sec. of State, Feb. 18, 1811. 3 Am. St. Pap. (For. Rel.), 414.

For a narrative of the causes of the dismissal of Mr. Jackson by the United States, see *infra*, §§ 84, 107.

The papers relative to the recall of Mr. Motley, in 1870, as minister at London, will be found in Senate Ex. Doc. No. 11, 41st Cong., 3d sess.

As to Mr. Motley's alleged expressions of disrespect to the President, see Senate Ex. Doc. No. 1, 40th Cong., 2d sess.

The arguments for a distinct diplomatic corps are well put in Schuyler's Am Diplomacy, 164 *ff.*

V. *NON-ACCEPTABLE MINISTER MAY BE REFUSED.*

§ 82.

For dismissal of minister, see § 84.

"It is a general rule that no nation has a right to keep an agent within the limits of another without the consent of that other."

Mr. Jefferson, Sec. of State, to Mr. Carmichael, Oct. 14, 1792. MSS. Inst., Ministers.

"Every foreign agent depends upon the double will of the two Governments—of that which sends him, and of that which is to permit

the exercise of his functions within its territory—and when either of these wills is refused or withdrawn, his authority to act within that territory becomes incomplete. By what member of the (our) Government the right of giving or withdrawing permission is to be exercised here, is a question on which no foreign agent can be permitted to make himself the umpire. It is sufficient for him, under our Government, that he is informed of it by the Executive."

Mr. Jefferson, Sec. of State, to minister of France, Dec. 9, 1793. MSS. Notes, For. Leg.; 4 Jeff. Works, 90.

The refusal of the United States to receive in 1809 a minister from the then titular Bourbon King of Spain could not justly be regarded as an offense by Ferdinand VII after the restoration of the Bourbons. "It was imputable to the state of Spain at that time, her territory being in the possession of contending armies nearly equal, victory sometimes favoring each, and the result altogether precarious."

Mr. Monroe, Sec. of State, to Mr. Onis, May 5, 1815. MSS. Notes, For. Leg.

The Government of the United States, if there be personal objections to a minister from a foreign sovereign, may, instead of declining to receive such minister, state the objections to such sovereign, saying that if he still ask for the minister's recognition, it will be given "as an act of accommodation to himself." But such recognition will not be given when demanded as a matter of right. "No instance is recollected of one power pressing another equally independent to recognize against its will a minister to whom objections of a personal nature are entertained."

Mr. Monroe, Sec. of State, to Mr. Onis, May 15, 1815. MSS. Notes, For. Leg.

A minister from a foreign sovereign will not be received when there are personal objections to him, and when the nomination is forced, not as a matter of courtesy, but in defiance of such objections.

Mr. Dallas, Acting Sec. of State, to Mr. Onis, June 26, 1815. See Mr. Monroe, Sec. of State, to Mr. Onis, Dec. 8, 1815. MSS. Notes, For. Leg.

"The interchange of ministers between friendly powers is intended for mutual advantage, and particularly for the important purpose of preserving the relations of amity between them. Each has a right to object to any person who has given just cause of offense, and to decline receiving him as a minister, or to demand his recall in case he had been received. Neither power has a right to force on the other a person so circumstanced as minister. Such an attempt would be incompatible with the independence of the power on whom it might be made. Self-respect forbids a presumption that the idea was ever entertained by your sovereign."

Mr. Monroe, Sec. of State, to Mr. Cevallos, July 17, 1815. MSS. Notes, For. Leg.

The reception of a commercial agent is altogether a voluntary act on the part of the Government "to whom he is accredited, who may decline without giving offense."

4 J. Q. Adams' Mem., 88.

The right of the Government to whom a minister is sent to request the Government sending him to recall him, is secured by public law.

Mr. Van Buren, Sec. of State, to Mr. Poinsett, Oct. 17, 1829. MSS. Inst., Am. St.

"In the intercourse between friendly nations, when the diplomatic representative of the one has rendered himself so unacceptable to the authorities of the other as to impair or destroy his usefulness, it has ever been the custom, unless under extraordinary circumstances, to yield to such a request when made in respectful and friendly terms. This practice is founded upon the principle that the great interests of nations ought not to be jeoparded merely for the sake of retaining an individual in a diplomatic station. If diplomatic agents render themselves so unacceptable as to produce a request for their recall from the Government to which they are accredited, the instances must be rare, indeed, in which such a request ought not to be granted. To refuse it would be to defeat the very purpose for which they are sent abroad—that of cultivating friendly relations between independent nations. Perhaps no circumstance would justify such a refusal, unless the national honor were involved in the question, and this cannot be pretended on the present occasion."

Mr. Buchanan, Sec. of State, to Mr. Jewett, Mar. 19, 1847. MSS. Inst., Peru.

A Government to whom a diplomatic agent is sent may, without giving just cause of offense to the Government sending him, refuse to receive him, and ordinarily a request for his recall will be at once granted by the latter Government.

Mr. Buchanan, Sec. of State, to Mr. Carr, Nov. 18, 1848. MSS. Inst., Barb. Powers.

"It must be borne in mind that an envoy is a *person* as well as the abstract representative of his Government, and that it is the prerogative of every Government to require that those with whom it deals be *personæ gratæ*, and to decide the question for itself. This Government has on several occasions availed itself of this personal right, without thereby being supposed to reflect on the representative character of the person himself, and still less upon the collective representative character of his associates."

Mr. Frelinghuysen, Sec. of State, to Mr. Morgan, Dec. 30, 1884. MSS. Inst., Mex.

"A diplomatic agent should be *persona grata* to the Government to which he is accredited."

Printed Pers. Inst. Dip. Agents, 1885.

As to refusal of French Government to receive Mr. C. C. Pinckney, see *infra*, § 148*b*.

VI. *NOT USUAL TO ASK AS TO ACCEPTABILITY IN ADVANCE.*

§ 82a.

"This Government does not require other powers to ask, in advance, if contemplated appointments of ministers will or will not be acceptable." But when such an inquiry is put, it is competent for this Department to answer, "that unless certain prevalent impressions were unfounded, the purposed appointment could not prove acceptable."

Mr. Fish, Sec. of State, to Mr. Neal, Mar. 11, 1870. MSS. Inst., Portugal.

"Upon reflection the importance of the question becomes apparent. Consequently, I have made careful search for the precedents and practice in this Department for the last ninety years. The result enables me to inform you that no case can be found in the annals of this Government in which the acceptability of an envoy from the United States was inquired about or ascertained in advance of his appointment to the mission for which he was chosen.

"Whilst the practice to which Count Kalnoky refers may, in a limited degree, prevail among European states, yet in this respect the exceptions are very numerous, and there are important reasons why, in this country, the practice should never have been adopted, and why its adoption would not be practical or wise.

"Our system of frequently recurring elections at regular and stated periods provides, and was intended to provide, an opportunity for the influence of public opinion upon those to whom the administration of public affairs has been intrusted by the people temporarily, and for a fixed time only, on the expiration of which an opportunity for a change in its agents and policies is thus afforded.

"The affiliation in sentiment between a political administration thus defeated at the polls and a foreign nation closely interested in maintaining certain international policies and lines of political conduct, might render it difficult for an administration, elected for the very purpose of producing a change of policy, to procure the consent of the foreign Government to the appointment of agents whose views were in harmony with the latest and prevailing expression of public opinion as the result of popular election."

Mr. Bayard, Sec. of State, to Baron Schaeffer, May 20, 1885. MSS. Notes, Austria; Senate Ex. Doc. No. 4, 49th Cong., 1st sess. See, to same effect, Mr. Bayard, Sec. of State, to Mr. McLane, May 27, 1885, MSS. Inst., France; Mr. Bayard to Mr. Francis, July 1, 1885; Mr. Bayard to Mr. Lee, Aug. 31, 1885, MSS. Inst., Austria.

As to asking for acceptance of a minister in advance, see discussion in Schuyler's American Diplomacy, 134 *ff.*

VII. *CONDITIONS DEROGATORY TO THE ACCREDITING GOVERNMENT CANNOT BE IMPOSED.*

§ 83.

"You will at the same time perceive that the French Government appears solicitous to impress the opinion that it is averse to a rupture with this country, and that it has in a qualified manner declared itself willing to receive a minister from the United States for the purpose of restoring a good understanding. *It is unfortunate for professions of this kind that they should be expressed in terms which may countenance the inadmissible pretension of a right to prescribe the qualifications which a minister from the United States should possess*, and that while France is asserting the existence of a disposition on her part to conciliate with sincerity the differences which have arisen, the sincerity of a like disposition on the part of the United States, of which so many demonstrative proofs have been given, should even be indirectly questioned. It is also worthy of observation that the decree of the Directory alleged to be intended to restrain the depredations of French cruisers on our commerce has not given, and cannot give, any relief. It enjoins them to conform to all the laws of France relative to cruising and prizes, while these laws are themselves the sources of the depredation of which we have so long, so justly, and so fruitlessly complained.

"The law of France, enacted in January last, which subjects to capture and condemnation neutral vessels and their cargoes, if any portion of the latter are of British fabric or produce, although the entire property belong to neutrals, instead of being rescinded, has lately received a confirmation by the failure of a proposition for its repeal. While this law, which is an unequivocal act of war on the commerce of the nations it attacks, continues in force, those nations can see in the French Government only a power regardless of their essential rights, of their independence and sovereignty—and if they possess the means, they can reconcile nothing with their interest and honor but a firm resistance."

President John Adams, Second Annual Address, 1798.

The correspondence of Messrs. Pinckney, Marshall, and Gerry, when ministers to France in 1797-'98, together with the X Y Z papers, is given in 2 Am. St. Pap. (For. Rel.), 153 *ff*, 185 *ff*, 205 *ff*, 229 *ff*. The report of Mr. Pickering, Sec. of State, Jan. 18, 1799, on this correspondence, is given in 2 Am. St. Pap. (For. Rel.), 229.

"Persevering in the pacific and humane policy which has been invariably professed and sincerely pursued by the executive authority of the United States, when indications were made on the part of the French Republic of a disposition to accommodate the existing differences between the two countries, I felt it to be my duty to prepare for meeting their advances by a nomination of ministers, upon certain conditions which the honor of our country dictated, and which its moderation had given

right to prescribe. The assurances which were required of the French overnment previous to the departure of our envoys have been given rough their minister of foreign relations, and I have directed them proceed on their mission to Paris. They have full power to conclude treaty, subject to the constitutional advice and consent of the Senate. ıe characters of these gentlemen are sure pledges to their country at nothing incompatible with its honor or interest, nothing incon-ıtent with our obligations of good faith or friendship to any other na-ın, will be stipulated."

President John Adams, Third Annual Address, 1799.

While under ordinary circumstances the Government of the United ates will recall a minister sent to a foreign country when requested the Government of such country, such recall will not be made ıen it would be an implied approval of prior misconduct or of un-ıt aggressions by the Government requesting it.

Mr. Buchanan to Mr. Wise, Sept. 27, 1845. MSS. Inst., Brazil.

'The question thus raised by your Government involves principles the greatest importance, and has no precedent as yet discoverable me in modern times and in intercourse between friendly nations; and ving submitted the matter to the consideration of the President, I ı instructed by him to inform your Government, through you, that ɔ ground upon which it is announced, that the usual ceremonial cour-ɔy and formal respect are to be withheld from this envoy of the ıited States to your Government, that is to say, because his wife is eged or supposed by your Government to entertain a certain religious th, and to be a member of a certain religious sect, cannot be assented by the Executive of the Government of the American people, but is d must be emphatically and promptly denied.

"The supreme law of this land expressly declares that 'no religious ɜt shall ever be required as a qualification to any office or public trust ıder the United States,' and by the same authority it is declared that ongress shall make no law respecting an establishment of religion or ohibiting the free exercise thereof.'

"This is a Government of laws, and all authority exercised must find ı measure and warrant thereunder.

"It is not within the power of the President nor of the Congress nor any judicial tribunal in the United States to take, or even hear, tes-nony, or in any mode to inquire into or decide upon the religious ılief of any official, and the proposition to allow this to be done by any reign Government is necessarily and *a fortiori* inadmissible.

"To suffer an infraction of this essential principle would lead to a sfranchisement of our citizens because of their religious belief, and us impair or destroy the most important end which our Constitution Government was intended to secure. Religious liberty is the chief

corner-stone of the American system of government, and provisions for its security are imbedded in the written charter and interwoven in the moral fabric of its laws.

"Anything that tends to invade a right so essential and sacred must be carefully guarded against, and I am satisfied that my countrymen, ever mindful of the suffering and sacrifices necessary to obtain it, will never consent to its impairment for any reason or under any pretext whatsoever.

"In harmony with this essential law is the almost equally potential unwritten law of American society that awards respect and delicate consideration to the women of the United States, and exacts deference in the treatment at home and abroad of the mothers, wives, and daughters of the Republic.

"The case we are now considering is that of an envoy of the United States, unquestionably fitted, morally and intellectually, and who has been duly accredited to a friendly Government, towards which he is thoroughly well affected; who, in accordance with the laws of this country, has long since contracted and has maintained an honorable marriage, and whose presence near the foreign Government in question is objected to by its agents on the sole ground that his wedded wife is alleged to entertain a religious faith which is held by very many of the most honored and valued citizens of the United States.

"It is not believed by the President that a doctrine and practice so destructive of religious liberty and freedom of conscience, so devoid of catholicity, and so opposed to the spirit of the age in which we live can for a moment be accepted by the great family of civilized nations or be allowed to control their diplomatic intercourse.

"Certain it is, it will never, in my belief, be accepted by the people of the United States, nor by any Administration which represents their sentiments.

"Permit me, therefore, being animated only by the sincerest desire to strengthen the ties of friendship and mutual respect between the Governments we respectively represent, most earnestly and respectfully to crave careful consideration of this note, and to request your Government to reconsider the views you have communicated to me in respect of the possible reception of Mr. Keiley on the mission of amity and mutual advantage which, in the amplest good faith, he was selected by this Government to perform.

"Into the religious belief of its envoy, or that of any member of his family, neither this Government nor any officer thereof, as I have shown you, has any right or power to inquire, or to apply any test whatever, or to decide such question, and to do so would constitute an infraction of the express letter and an invasion of the pervading spirit of the supreme law of this land.

"While thus making reply to the only reason stated by your Government as the cause of its unreadiness to receive Mr. Keiley, permit me

also to remark that the President fully recognizes the highly important and undoubted right of every Government to decide for itself whether the individual presented as the envoy of another state is or is not an acceptable person, and, in the exercise of its own high and friendly discretion, to receive or not the person so presented. This right, so freely accorded by the United States to all other nations, its Government would insist upon should an occasion deemed to be proper arise.

Mr. Bayard, Sec. of State, to Baron Schaeffer, May 18, 1885. MSS. Notes, Austria. Senate Ex. Doc. No. 4, 49th Cong., 1st sess.

"Question has arisen with the Government of Austria-Hungary touching the representation of the United States at Vienna. Having, under my constitutional prerogative, appointed an estimable citizen of unimpeached probity and competence as minister at that court, the Government of Austria-Hungary invited this Government to take cognizance of certain exceptions, based upon allegations against the personal acceptability of Mr. Keiley, the appointed envoy, asking that, in view thereof, the appointment should be withdrawn. The reasons advanced were such as could not be acquiesced in without violation of my oath of office and the precepts of the Constitution, since they necessarily involved a limitation in favor of a foreign Government upon the right of selection by the Executive, and required such an application of a religious test as a qualification for office under the United States as would have resulted in the practical disfranchisement of a large class of our citizens and the abandonment of a vital principle in our Government. The Austro-Hungarian Government finally decided not to receive Mr. Keiley as the envoy of the United States, and that gentleman has since resigned his commission, leaving the post vacant. I have made no new nomination, and the interests of this Government at Vienna are now in the care of the secretary of legation, acting as chargé d'affaires *ad interim*."

President Cleveland, First Annual Message, 1885.

VIII. *MINISTER MISCONDUCTING HIMSELF MAY BE SENT BACK.*

§ 84.

"The representative and executive bodies of France have manifested generally a friendly attachment to this country, have given advantages to our commerce and navigation, and have made overtures for placing these advantages on permanent ground. A decree, however, of the National Assembly, subjecting vessels laden with provisions to be carried into their ports, and making enemy goods lawful prize in the vessel of a friend, contrary to our treaty, though revoked at one time as to the United States, has been since extended to their vessels also, as has been recently stated to us. Representations on this subject will be immediately given in charge to our minister there, and the result shall be communicated to the legislature.

"It is with extreme concern I have to inform you that the proceedings of the person whom they have unfortunately appointed their minister plenipotentiary here have breathed nothing of the friendly spirit of the nation which sent him. Their tendency, on the contrary, has been to involve us in war abroad, and discord and anarchy at home. So far as his acts or those of his agents have threatened our immediate commitment in the war, or flagrant insult to the authority of the laws, their effect has been counteracted by the ordinary cognizance of the laws, and by an exertion of the powers confided to me. Where their danger was not imminent, they have been borne with from sentiments of regard to his nation, from a sense of their friendship toward us, from a conviction that they would not suffer us to remain long exposed to the action of a person who has so little respected our mutual dispositions, and from a reliance on the promises of my fellow-citizens in their principles of peace and order. In the mean time, I have respected and pursued the stipulations of our treaties, according to what I judged their true sense, and have withheld no act of friendship which their affairs have called for from us, and which justice to others left us free to perform. I have gone further. Rather than employ force for the restitution of certain vessels which I deemed the United States bound to restore, I thought it more advisable to satisfy the parties by avowing it to be my opinion that, if restitution were not made, it would be incumbent on the United States to make compensation. The papers now communicated will more particularly apprise you of these transactions."

President Washington, special message, Dec. 5, 1793. See 1 Am. St. Pap. (For. Rel.), 141.

That Washington's mature judgment was against dismissing Genet except in case of necessity is admitted by Mr. Hildreth (4 Hist. U. S., 439): "So insolent continued to be the whole tone of Genet's correspondence, and so open his attempts to stir up the people, the State governments, and the new Congress about to assemble, against the Executive, that Washington proposed to the Cabinet to discontinue his functions and to order him away. He was himself strongly inclined to this course; but this step, like that of publishing the dispatches, was defeated by Jefferson and Randolph, *against whose united opinions Washington did not choose to act.* They suggested that Genet would not obey his order, and that such a step might revive his popularity and give him (Genet?) a majority in the new Congress soon to assemble. Besides, the measure was a very harsh one, and might expose the United States to a declaration of war on the part of France, the only nation on earth sincerely their friend." That *Genet* might have a majority in his favor in Congress was not a contingency likely to affect the judgment of Washington; but there is no question that for other reasons he concluded, after his usual deilberation, not to adopt the extreme measures proposed by Hamilton and Knox.

The Government of the United States having finally asked the French Government to recall Genet, he was recalled and Fauchet sent in his

lace. On February 21, 1794, Fauchet addressed a letter to Mr. Randolph, then Secretary of State, "communicating the order of the Executory Provisory Council of the French Republic, 'to demand the arrest f M. Genet and all the other agents who may have participated in his aults and his sentiments.'" Mr. Randolph answered that he was directed y the President to inform M. Fauchet "that notwithstanding his sinere disposition to cultivate its (the French Republic's) friendship, he hinks his legal power too questionable to cause the arrest to be made."

Mr. Randolph, Sec. of State, to Mr. Fauchet, Feb. 27, 1794. MSS. Notes, For. Leg.

As to recall of Genet and Morris, see further *infra*, § 145*b*.

Mr. Fauchet, accredited to take the place of Mr. Genet, entered on is duties on February 21, 1794, and asked for Mr. Genet's arrest, for misconduct. "Our co-operation was refused for reasons of law and magnanimity."

Mr. Pickering, Sec. of State, to Mr. Monroe, June 1, 1795. MSS. Inst., Ministers. 1 Am. St. Pap. (For. Rel.), 709.

The dismissal in 1806 of Yrujo, the Spanish minister, was based on an attempt on his part to bribe a newspaper in Philadelphia to advocate the Spanish view of the boundary question then in controversy between Spain and the United States. His recall was demanded by Mr. Madison, Secretary of State, but, at the request of his Government, it was understood that he was to be permitted to depart on the footing of a minister going home on leave. But he took advantage of this concession by delaying his departure, and hovering "about Washington while the Spanish question was still before Congress, and upon being notified by Madison that his presence was displeasing to the President he published two insolent replies, announcing that he should stay in the capital as long as he liked. * * A bill was proposed in the Senate authorizing the President to order the departure of foreign ministers in certain cases; which, however, was dropped, for to have passed it would import that in the present instance the Executive had moved precipitately."

2 Schouler's U. S., 108.

As to recall of Yrujo, Spanish minister, see further *infra*, § 106.

Private memoranda by Mr. Madison of his interviews with Mr. Rose, in February, 1808, are given in 2 Madison's Writings, 411 *ff.* "Mr. Rose's mission is abortive. Communications on the subject will be made to Congress in a day or two. He made it an indispensable preliminary to his entering on a negotiation, or even disclosing the terms of satisfaction he had to offer, that the proclamation of the President should be put out of force. This being inadmissible, it was proposed that on his disclosing his terms, and their appearing to be satisfactory, a repeal of the proclamation and the act of reparation might bear the same date. His instructions being a bar to this, the correspondence was closed, with an intimation that it rested with his Government to decide on the case. He will depart, I understand, without delay."

Mr. Madison, Sec. of State (unofficial), to Mr. Monroe, Mar. 18, 1808; 2 Madison's Writings, 422.

On November 23, 1809, Mr. R. Smith, Secretary of State, in a letter to Mr. Pinkney, then minister to England, instructed Mr. Pinkney to ask for the recall of Mr. Jackson, then British minister at Washington, on account of offensive conduct of Mr. Jackson. He was not, however, recalled at the time, though the United States Government declined to have further official communication with him. On June 30, 1810, Mr. R. Smith wrote to Mr. Pinkney "to repeat the demand for the recall of Mr. Jackson," and reference was made to continued offenses by Mr. Jackson in "toasts given by him at the public dinners at Boston."

The primary ground on which President Madison demanded the recall of Mr. Jackson was a statement of Mr. Jackson, in a note to Mr. Smith, Secretary of State, declaring that the agreement entered into by the Administration with Mr. Erskine, who had preceded Mr. Jackson, "was concluded in violation of that gentleman's (Mr. Erskine's) instructions," which "were at the time, in substance, made known to you." This was a charge at once of falsehood and of duplicity; since Mr. Smith has over and over again declared that Mr. Erskine's instructions were not known at the time to the Administration. The insult was the more marked as Mr. Erskine had himself stated that he held back his instructions under the impression that it was not his duty to impart them. A joint resolution passed Congress sustaining the Administration in dismissing Mr. Jackson, and declaring the course of the latter to be indecorous and insulting. Further details of Mr. Jackson's misconduct in his mission are given, *infra*, § 107.

See as exhibiting the views of the minority in Congress on this subject, Quincy's Speeches, 157 *ff.*

"In my letter of the 19th ultimo, I stated to you that the declaration in your letter of the 11th that the dispatch from Mr. Canning to Mr. Erskine, of the 23d of January, was the only dispatch by which the conditions were prescribed to Mr. Erskine for the conclusion of an arrangement on the matter to which it related, was then, for the first time, made to this Government. And it was added that, if that dispatch had been communicated at the time of the arrangement, or if it had been known that the propositions contained in it were the only ones on which he was authorized to make an arrangement, the arrangement would not have been made.

"In my letter of the 1st instant, adverting to the repetition in your letter of the 23d ultimo of language implying a knowledge in this Government that the instructions of your predecessor did not authorize the arrangement formed by him, an intimation was distinctly given to to you that after the explicit and peremptory asseveration that this Government had not any such knowledge, and that with such knowledge such an arrangement would not have been made, no such insinuation could be admitted by this Government.

"Finding that in your reply of the 4th instant you have used language which cannot be understood but as reiterating and even aggravating the same gross insinuation, it only remains, in order to preclude opportunities which are thus abused, to inform you that no further communications will be received from you, and that the necessity of

this determination will, without delay, be made known to your Government. In the mean time a ready attention will be given to any communications affecting the interests of the two nations through any other channel that may be substituted."

Mr. R. Smith, Sec. of State, to Mr. Jackson, Nov. 8, 1809. 3 Am. St. Pap. (For. Rel.), 318. See *infra*, § 107.

"Mr. Jackson immediately withdrew, with every member of his mission, from Washington; he made New York the place of his residence. The secretary of the legation was desired by the British minister to give notice of that circumstance to the Department of State. The Government, without delay, requested the recall of Mr. Jackson, and on the 14th of March, 1810, Mr. Pinkney, the American minister in London, received notice that Mr. Jackson had been directed to return to England, but his recall was not accompanied with any mark of the displeasure of his own Government."

2 Lyman's Diplomacy of U. S., chap. i.

"In the cases of Erskine and Jackson the correspondence on his (Mr. R. Smith's) part had in a manner fallen entirely on my hands."

President Madison's statement on the resignation of Mr. Smith, Sec. of State, Apr., 1811. 2 Madison's Writings, 499.

The following confidential letters of President Madison to Mr. Jefferson will be of use as illustrating the above:

"The Gazette of yesterday contains the mode pursued for reanimating confidence in the pledge of the British Government given by Mr. Erskine in his arrangement with this Government. The puzzle created by the order of April struck every one. Erskine assures us that his Government was under such impressions as to the views of this, that not the slightest expectation existed of our fairly meeting its overtures, and that the last order was considered as a reasonable (seasonable?) mitigation of a failure of the experiment. This explanation seems as extraordinary as the alternatives it shows. The fresh declarations of Mr. Erskine seem to have quieted the distrust which was becoming pretty strong, but has not destroyed the effect of the ill-grace stamped on the British retreat, and of the commercial rigor by the new and insidious duties stated in the newspaper. It may be expected, I think, that the British Government will fulfill what its minister has stipulated, and that if it means to be trickish, it will frustrate the proposed negotiation, and then say these orders were not permanently repealed, but only withdrawn in the mean time."

President Madison to Mr. Jefferson, June 20, 1809. Confidential Jefferson MSS., Dep. of State. See 2 Madison's Writings, 444.

"You will see by the instructions to Erskine, as published by Canning, that the latter was as much determined that there should be no adjustment as the former was that there should be one. There must, however, have been other instructions comprehending the case of the Chesapeake and other communications from Canning accompanying the British order of April 26, as referred to in Erskine's quieting declaration last made to Mr. Smith. I believe also, that Erskine's letter to Canning, not disclosed by the latter, will not warrant his ascribing to Erskine the statement of conversations with Mr. G. (Gallatin), Mr. S.

(R. Smith), and myself. Pinkney will also disavow what Canning put in his mouth."

Same to same, Aug. 3, 1809, *ibid.* 2 Madison's Writings, 449.

"Erskine is in a ticklish situation with his Government. I suspect he will not be able to defend himself against the charge of exceeding his instructions, notwithstanding the appeal he makes to sundry others not published. But he will make out a strong case against Canning, and he will be able to avail himself of much of the absurdity and evident inadmissibility of the articles disregarded by him. He can plead, also, that the difference between his arrangement and the spontaneous orders of April 26 is too slight to justify the disavowal of him. This difference seems, indeed, to limit its importance to the case of Holland, and to consist in the direct trade admitted by the arrangement and an indirect one through the adjoining ports required by the orders. To give importance to this distinction the ministry must avow, what if they were not shameless they would avow, that their object is not to retaliate injury on an enemy, but to prevent the legitimate trade of the United States from interfering with the London smugglers of sugar and coffee."

Same to same, Aug. 16, 1809, *ibid.* 2 Madison's Writings, 451.

"Jackson, according to a note sent from Annapolis to Mr. Smith, was to be in Washington on Friday evening last. The letters from Mr. Pinkney brought by him were dated June 23, and merely rehearsed a conversation with Canning, from which it would seem that C. readily admitted that his second condition (colonial trade) had no connection with the subject, and that it was not to be expected the United States would accede to the third (G. B. to execute our laws). Why, then, make them *ultimata*, or, if not *ultimata*, why reject the arrangement of E. (Erskine) for not including them. For as to the first article, if he does not fly from his language to P., the continuance of the non-intercourse *vs.* France, cannot be denied to be a substantial fulfillment of it. From his view of the matter, it might be inferred that Jackson came with a real olive in his hand. But besides the general slipperiness of his superior, some ideas fell from him in his conversation with P. justifying distrust of his views."

Same to same, Sept. 11, 1809, *ibid.* 2 Madison's Writings, 453. See further Mr. Madison to Mr. Pinkney, Jan. 20, 1810. 2 Madison's Writings, 468 *ff.*

"The long debates on the resolution of Mr. Giles, on the subject of Mr. Jackson, have terminated in affirmative votes, by large majorities. This, with the refusal of the Executive to hold communication with him, it is supposed, will produce a crisis in the British policy towards the United States, to which the representations of the angry minister will doubtless be calculated to give an unfavorable turn. Should this happen, our precautionary views will have been the more seasonable. It is most probable, however, that instead of expressing resentment by open war, it will appear in more extended depredations on our commerce, in declining to replace Mr. Jackson, and, perhaps, in the course observed with respect to you, in meeting which your judgment will be the best guide."

President Madison to Mr. Pinkney, minister at London, Jan. 20, 1810. 2 Madison's Writings, 469.

"From the manner in which the vacancy left by Jackson is provided for, it is inferred that a sacrifice is meant of the respect belonging to this Government, either to the pride of the British Government, or to the feelings of those who have taken side with it against their own. On either supposition, it is necessary to counteract the ignoble purpose. You will accordingly find that on ascertaining the substitution of a chargé to be an intentional degradation of the diplomatic intercourse on the part of Great Britain, it is deemed proper that no higher functionary should represent the United States at London. I sincerely wish, on every account, that the views of the British Government, in this instance, may not be such as are denoted by appearances, or that, on finding the tendency of them, they may be changed. However the fact may turn out, you will, of course, not lose sight of the expediency of mingling in every step you take as much of moderation, and even of conciliation, as can be justifiable; and will, in particular, if the present dispatches should find you in actual negotiation, be governed by the result of it in determining the question of your devolving your trust on a secretary of legation."

President Madison to Mr. Pinkney, minister at London, May 23, 1810. 2 Madison's Writings, 474.

According to Sir A. Alison, the refusal of the British ministry to "ratify this arrangement" (that of Erskine), "although fully justified in point of right by Napoleon's violence, and by Mr. Erskine's deviation from his instructions, may now well be characterized as one of the most unfortunate, in point of expediency, ever adopted by the British Government."

10 Alison's Hist. of Europe, 650. See *infra*, §§ 107, 150*b*.

Mr. Jackson's course in other respects is noticed more fully *infra*, § 107.

Mr. R. Smith's explanation to Mr. Pinkney of the dismissal of Mr. Jackson is in 3 American State Papers (Foreign Relations), 318, *ff*. Mr. Pinkney's letter to Lord Wellesley, requesting Mr. Jackson's recall, is given in same volume, 352 *ff*. Lord Wellesley's reply is in same volume, 355 *ff*. In this reply it is said that "His Majesty is always disposed to pay the utmost attention to the wishes and sentiments of states in amity with him, and has, therefore, been pleased to direct the return of Mr. Jackson to England. But His Majesty has not marked with any expression of his displeasure the conduct of Mr. Jackson, whose integrity, zeal, and ability have long been distinguished in His Majesty's service, and who does not appear, on the present occasion, to have committed any intentional offense against the Government of the United States."

See 7 Wait's St. Pap., 283, 295; Lawrence's Wheaton (ed. 1863), 437.
As to alleged insults to Mr. Jackson, see *infra*, §§ 94, 107.

The Government of the United States will acquiesce in a demand of a foreign Government for the recall of a minister who is personally unacceptable to such Government.

Mr. Van Buren, Sec. of State, to Mr. Poinsett, Oct. 16, 1829. MSS. Inst., Am. States.

The publication by a foreign minister, during his official term, of a document charging the United States with bad faith, will be ground to demand his recall; and if it be subsequently sustained by his Government, this will be regarded by the United States as a gross indignity.

Mr. Forsyth, Sec. of State, report to President of Dec. 2, 1837. MSS. Report Book. See *supra*, § 79.

It is within the province of a Government to whom a minister is accredited to request his recall, and this request, when personal to the minister himself, will be complied with.

Mr. Buchanan, Sec. of State, to Mr. Jewett, Mar. 19, 1847. MSS. Inst., Peru.

While the right of a sovereign to require the recall of an offensive minister sent to him is generally recognized, a qualification is recognized in cases where the request is based on a charge of an offense alleged to have been committed by such minister of which offense the Government commissioning him holds him to be innocent. In such case no recall based on this assumption of such offense will be granted.

Mr. Buchanan, Sec. of State, to Mr. Leal, Aug. 30, 1847. MSS. Notes, Brazil.

"In 1849, an exciting diplomatic correspondence took place between Mr. Clayton, Secretary of State, and Mr. Poussin, minister plenipotentiary of France, named by the provisional Government. Though this occurrence occasioned some delay in the reception of the letters of credence of the American minister, Mr. Rives, the French Government disavowed and recalled its minister. Lesur, Annuaire, 1849, 665."

Lawrence's Wheaton (ed. 1863), 438.

Mr. Webster's report of June 23, 1852, on the withdrawal of Mr. Hülsemann as chargé d'affaires for Austria, is given in Senate Ex. Doc. No. 92, 32d Cong., 1st sess. See also Senate Ex. Doc. No. 9, 31st Cong., 1st sess., *supra*, § 48.

Persistently enlisting in the United States of soldiers to serve in the British army against Russia by British agents, with the connivance of the British minister, and of certain British consuls, is an invasion of the sovereignty and neutrality of the United States which will justify a request to the British Government to recall the minister and consuls concerned.

Mr. Marcy, Sec. of State, to Mr. Buchanan, June 9, 1855; MSS. Inst., Gr. Brit. Same to same, July 15, 1855. Same to same, Oct. 1, 1855; Oct. 15, 1855; Oct. 31, 1855; Nov. 12, 1855; Dec. 28, 1855; Apr. 22, 1856. Mr. Marcy to Mr. Dallas, May 27, 1856; June 16, 1856.

As to prosecutions for enlisting in the United States under such circumstances, see *infra*, §§ 387, 395, 404.

A foreign minister who engages in the enlistment of troops here for his Government is subject to be summarily expelled from the country, or, after demand of recall, dismissed by the President.

7 Op., 367, Cushing, 1855.

See as to cessation of intercourse with British minister, House Ex. Doc. No. 107, 34th Cong., 1st sess.

"The conduct of Mr. Catacazy, the Russian minister at Washington, having been for some time past such as materially to impair his usefulness to his own Government, and to render intercourse with him for either business or social purposes highly disagreeable," Mr. Curtin, minister to Russia from the United States, was instructed to intimate to the Russian Government that "under the circumstances the President is of the opinion that the interests of both countries would be promoted and those relations of cordiality with the Government of the Czar, of the importance of which he is well aware, would be placed upon a much surer footing 'if the head of the Russian legation here was to be changed.'"

Mr. Fish, Sec. of State, to Mr. Curtin, June 16, 1871. MSS. Inst., Russia.

"The hesitation and delay in complying with the request directed in dispatch of 16th June occasion disquiet and disappointment. The reason alleged not satisfactory, as communication with minister for foreign affairs is open. Decision important before the advent of the prince, as the President cannot be expected to receive as the principal attendant of his highness one who has been abusive of him, and is personally unacceptable. Instruction of this date to you on the subject."

Mr. Fish, Sec. of State, to Mr. Curtin, Aug. 18, 1871. (Telegram.) MSS. Inst., Russia.

"It is believed to be usual when a minister shall have made himself so unacceptable to the Government to which he is accredited as to have forfeited the confidence of that Government, and to have rendered intercourse with him disagreeable, for the Government promptly to recall him upon the mere intimation of a wish to that effect. This has invariably been done in other similar instances which have occurred in the history of this Government. It will be a cause of much pain to the President if the Imperial Government should think proper to adopt a different course on this occasion."

Mr. Davis, Acting Sec. of State, to Mr. Curtin, Aug. 18, 1871. MSS. Inst., Russia.

"Every Government has the right to have the representative of another power an acceptable person, and no Government has the right to expect of another the retention of a representative who indulges in personal abuse of the head of the Government to which he is accredited, as Mr. Catacazy has done. You may read this to the vice-chancellor."

Mr. Fish, Sec. of State, to Mr. Curtin, Sept. 5, 1871. MSS. Inst., Russia.

"The President, desiring to manifest the sincerity of his friendship for the Russian Government, and, in view of the expected visit of the grand duke and of the alleged impossibility of sending another minister to replace the one now here in season to accompany the prince, has decided to tolerate the present minister until after the visit of the prince. That minister will then be dismissed, if not recalled. The

President, however, will not formally receive Mr. Catacazy, except when he accompanies the prince, and can hold no conversation with him.

"You will communicate this to the vice-chancellor immediately, and may read it to him."

Mr. Fish, Sec. of State, to Mr. Curtin, Sept. 20, 1871, MSS. Inst., Russia.

After the Government of the United States has requested the recall of a foreign minister, if there be delay or difficulty in obtaining such recall, his passports, in case of continued misconduct on his part, may be sent to him forthwith.

Mr. Fish, Sec. of State, to Mr. Catacazy, Nov. 10, 16, 1871. MSS. Notes, Russia.

"The official or authorized statement that a minister has made himself unacceptable, or even that he has ceased to be '*persona grata*,' to the Government to which he is accredited, is sufficient to invoke the deference of a friendly power and the observance of the courtesy and the practice regulating the diplomatic intercourse of the powers of Christendom for the recall of an objectionable minister. The declaration of the authorized representative of the power to which an offending minister is accredited is all that can properly be asked, and all that a self respecting power could give."

Mr. Fish, Sec. of State, to Mr. Curtin, Nov. 16, 1871. MSS. Inst., Russia.

As to recall on ground of extraneous publications, see *supra*, § 79.

As to Catacazy's retirement, see further Mr. Fish's Report of Dec. 6, 1871, Senate Ex. Doc. No. 5, 42d Cong., 2d sess. Mr. Fish, Sec. of State, to Mr. Brown, Oct. 10, 1871; MSS. Inst., Turkey.

IX. *MODE OF PRESENTATION AND TAKING LEAVE.*

§ 85.

Mr. Monroe, having been recalled from France in the fall of 1796, his place was taken by Mr. C. C. Pinckney, who arrived in Paris in December in that year. The day after Mr. Pinckney's arrival, on December 12, Mr. Monroe and Mr. Pinckney visited De la Croix, the French minister of foreign affairs, who took little pains to conceal his belief that Pinckney had been sent to supersede Monroe on account of the latter's kindly feeling to France. A few days afterwards Mr. Monroe received a formal notification that Mr. Pinckney would not be received until the grievances complained of by France were redressed; and Mr. Monroe's position was made peculiarly embarrassing by the fact that this communication was coupled with a profusion of compliments to himself. At that time no stranger could remain in France without police permission. Not only did the Government refuse to recognize Mr. Pinckney as minister, but he was informed, on January 25, that he could not remain in Paris without this police permission, and on February 3 he was further informed that by remaining he made himself liable to arrest. He accordingly obtained his passports and left France for Holland. Mr. Monroe has been charged with want of dignity in accepting conspicuous hospi-

tality from the French Government after his successor had been thus repelled. But the farewell reception, in which this peculiar adulation was bestowed on Mr. Monroe, was on December 30, three weeks before either he or Mr. Pinckney were advised of Mr. Pinckney's final rejection. In Mr. Ticknor's Life (vol. 2, 413), we are told that Baron Pichon, when attempting, in 1837, to explain the conduct of the Directory, intimated that Mr. Monroe had spoken of Mr. Pinckney as of aristocratic tendencies. Memory after the lapse of forty years cannot be relied on, and it is not unlikely that Mr. Pichon confused Mr. Monroe's statements with his own prejudices. It is certain that Mr. Pinckney's letters to the Department speak in the highest terms of the generous and delicate assistance he received from Mr. Monroe while they were together in France. Mr. Pinckney was too discerning and unimpassioned to have been imposed on by mere professions of support; Mr. Monroe too honorable to profess a support he did not give.

See 1 Schouler's Hist. U. S., 347; 5 Hildreth, U. S., 46, *infra*, § 148*b*.

As to ceremonial in respect to diplomatic agents, see 9 John Adams' Works, 271, quoted *supra*, § 81.

As to China, see *infra*, § 107.

Mr. J. Adams' account of his presentation to George III and the Queen is given in detail in 1 Lyman's Diplomacy of the U. S., 159 *ff*.

The details of the reception of Gerard, the first French minister to the U. S., on July 1778, are given in 1 Lyman's Diplomacy of the U. S., 57.

"When a foreign minister arrives at London, Paris, St. Petersburg, or other European court, he obtains an interview of the secretary of state for foreign affairs, and delivers to him a copy of his letter of credence. The secretary of state afterwards, on a day fixed, presents him to the sovereign, to whom he delivers the original. On that day, or as soon as convenient, he visits all the secretaries or heads of the Government.

"The foreign minister's wife, who has claims incident to the station of her husband, makes a visit at the same time to the wives of the secretaries or heads of the Government.

"When foreign ministers leave the seat of government, to travel in the interior, they give notice of it to the secretary of state for foreign affairs. They likewise give notice of their return home."

Mr. Monroe, Sec. of State, to Mr. Serurier, May 5, 1814. MSS. Notes For. Leg.

"Mr. Daschkoff came to tell me that he had at length received his letters of credence. He meant of recall. This is a mistake so common that there is a confusion of ideas prevalent among three-fourths of the diplomatic characters I know. Letters of recall are received by a minister from his own Government. Letters of recredence are from the Government to which he is accredited to his own, recommending him back to his own master."

4 J. Q. Adams' Mem., 231.

Although the mission of a minister ordinarily terminates with his delivery of a letter of recall, this is open to many exceptions. "The more usual practice has been for the succeeding minister to present the letter recalling his predecessor." Hence an omission to send the retir-

ing minister a letter of recall, does not in itself sustain a minister in remaining at his post after the period fixed for his return.

Mr. Forsyth, Sec. of State, to 5th Auditor, July 5, 1840. MSS. Dom. Let.

"The diplomatic agents who are accredited to the President usually transmit to the Department a copy of their letter of credence, with a note requesting the appointment of a time for them to present the original. A copy of the remarks which they may think proper to make on the occasion, frequently accompanies their note asking for a presentation, and is submitted to the President in order that he may prepare a suitable reply. It has not of late been deemed necessary to write out this answer. The Secretary of State usually accompanies the diplomatic agent to the President on his first presentation, but this is not deemed necessary on subsequent occasions."

Mr. Marcy, Sec. of State, to Mr. Almonte, Jan. 27, 1855. MSS. Notes, Mex.

"This Department understands that intercourse between a diplomatic agent and the Government to which he may have been accredited, is not always terminated only by the presentation of the letters of recall of such agent. There are several other ways in which such intercourse may be concluded. Whether this shall be brought about in one way or in another, diplomatic immunities for the retiring agent may undoubtedly be claimed for a reasonable time after his official functions shall be at an end. That period, however, must depend upon circumstances of which the Government to which he had been accredited is to be the judge. The main object for which the privilege is allowed is to enable the diplomatic representative to adjust his private affairs, and to depart the country without annoyance. If, however, the privilege shall be abused by an undue lingering in the country by such agent after his official functions are at an end, the Government of that country is justified in regarding the immunities as forfeited. It is hoped, however, that there may be no occasion to apply this rule in the case of Mr. Catacazy."

Mr. Fish, Sec. of State, to Mr. Gorloff, Dec. 1, 1871. MSS. Notes, Russia.

"Your dispatch of the 28th of March, marked '*Separate*,' in relation to the presentation by you at the courts of Bavaria, Wurtemberg, Baden, and Hesse of letters of recall on the occasion of your retirement from the post at Berlin, has been received, and the subject has been carefully considered.

"On examination of the precedent established in the case of Mr. Wheaton, who while minister at Berlin was empowered to conclude treaties with other German states, it is found that it was not deemed expedient at that time to authorize Mr. Wheaton to present special letters of recall. The Department regards the decision then made as correct, and adheres to it in the present case.

"Letters of recall to the Emperor of Germany are inclosed, and in

presenting them you will express to the Emperor the satisfaction with which the President entertains the conviction that your mission has tended to cement the cordial relations of amity and good feeling which he desires to maintain and preserve between two powers which have become kindred in every sense of the word."

Mr. Fish, Sec. of State, to Mr. Bancroft, Apr. 21, 1874. MSS. Inst., Germ.; For. Rel., 1874.

"In most cases, a mission of the United States will be found already established at the seat of government, and still in charge of the outgoing representative, or of a chargé d'affaires *ad interim*. In either case, the newly-arrived agent should seek, through the actual incumbent of the mission, an informal conference with the minister for foreign affairs, or such other officer of the Government to which he is accredited as may be found authorized to act in the premises, and arrange with him for his official reception. He should at the same time, in his own name, address a formal note to the minister for foreign affairs, communicating the fact of his appointment and his rank, and requesting the designation of a time and place when he may present his letter of credence.

"Should the diplomatic agent be of the grade of envoy extraordinary and minister plenipotentiary or minister resident, in either of which cases he will bear a letter of credence, signed by the President and addressed to the chief of the Government, he will, on asking audience for the purpose of presenting the original in person, communicate to the minister for foreign affairs the open office copy which accompanies his original instructions. He will also, for the completion of the archives of his legation, prepare and retain on file a copy of his credentials.

"If, however, the agent be of the rank of chargé d'affaires, bearing a letter of credence addressed to the minister for foreign affairs, he will, on addressing to the minister the formal note prescribed in section 23, communicate to him the office copy of his credential letter, and await the minister's pleasure as to receiving the original in a personal interview.

"On the occasion of presenting ceremonial letters of recall or of credence to the head of the Government, it is usual at most capitals for the retiring or incoming diplomatic agent to make a brief address, pertinent to the occasion. This address should be written and spoken in the English tongue by the representative of the United States.

"Before the day fixed for his audience of reception or of leave-taking, he should furnish to the minister for foreign affairs a copy of his proposed remarks, in order that a suitable reply thereto may be prepared.

"A copy of the address and of the reply must be sent to the Department of State.

"When the retiring representative is, like his successor, of the grade of envoy extraordinary and minister plenipotentiary or minister resident, it is customary for him to present his letter of recall in the same audience in which his successor presents his credential letter, unless for some sufficient cause he should have been obliged to take formal leave and present his letter of recall before the presentation of his successor.

"It sometimes happens that the retiring diplomatic agent may not have received his letter of recall from the Department of State in season to present it in person before his departure. In such cases his suc-

cessor or, if need be (after receiving special instructions to that effect), the chargé d'affaires *ad interim*, when there is one, will present the letter of recall in such manner as may be indicated to him by the minister for foreign affairs."

Printed Pers. Inst. Dip. Agents, 1885.

"On arriving at his post, the minister's first duty is to inform the minister of foreign affairs of his arrival and of his character, and to request an interview for the purpose of asking an audience for the purpose of presenting his credentials to the head of the state. He is usually received at once by the minister, and by the sovereign as soon as an interview can be arranged, though in case of absence or illness there may be a delay of weeks, if not of months. Etiquette, however, demands that the audience for presenting credentials should take place as early as possible. These audiences are either public or private. In the first, the minister is accompanied by the minister of foreign affairs, generally followed by his own secretaries, and goes to the palace in more or less state, according to the customs of the place; for these vary greatly in different capitals. For an ambassador a state carriage is always sent. This is not always the case with the minister in a capital where ambassadors also reside, it being considered desirable to draw distinctions of ceremony between the two. In small countries, where there are no ambassadors, a state carriage is usually sent for the minister, in some places accompanied by an escort. At a formal audience all parties are standing; the minister enters, is introduced to the sovereign by the minister of foreign affairs, addresses a few words to him stating his character, and presents his letters of credence. These the sovereign takes, sometimes goes through the formality of reading them, and replies briefly to the minister. After the formal part of the audience is over, there is generally a friendly conversation of a few moments, and the ceremony ends in much the same way as it began. In some countries it is expected that a formal speech will be made by the minister to the sovereign, and a formal reply made. In such cases the speech is written out in advance and given to the minister of foreign affairs, who returns a copy of the reply before the audience takes place. This is in order to prevent embarrassment, as well as to see that nothing unpleasant be said. In some countries, as in Russia, a minister is nearly always received in private audience. He goes to the palace alone, is met by the grand master of ceremonies, conducted to the Emperor, introduced into his room, and is left alone with him. After a word or two the Emperor requests the minister to be seated; and the conversation is informal."

Schuyler's Am. Dip., 136–138.

X. *INCUMBENT CONTINUES UNTIL ARRIVAL OF SUCCESSOR.*

§ 86.

A foreign minister of the United States is not ordinarily displaced by the appointment of a successor until the latter enters upon his duties.

13 Op., 309, Akerman, 1870.

General Schenck on the 17th February, 1876, tendered his resignation as minister to London, to take effect on the arrival of his successor.

Before his letter of resignation arrived, and on the 21st February, 1876, he sent a telegram asking leave of absence to repair to Washington, which leave was given on 23d February. On March 6 the Secretary of State wrote to General Schenck that his resignation was accepted. Before this letter reached London General Schenck was on his way to Washington. On 17th February the name of Mr. Dana was sent to the Senate as successor to General Schenck, the message stating that the nomination was in place of General Schenck, "resigned." It was held that when the resignation was tendered, and the time at which it is to take effect specifically named in the resignation, the acceptance of the resignation without qualification was an acceptance with the condition attached. It was at the same time held that if General Schenck had remained in England he would have continued to be minister until the arrival of his successor; but having subsequently obtained leave of absence, and having returned in pursuance of that leave, he ceased to be minister on the nomination and confirmation of his successor.

15 Op., 911, Pierrepont, 1876.

"Resignation while at the agent's post is always understood to take effect on his being relieved by his successor. If desired to take effect sooner, the circumstance should be stated in the letter of resignation, and be so accepted, before the incumbent quits his post.

"Resignation while on leave of absence in the United States is understood to take effect from the date of its acceptance.

"If the diplomatic agent tender his resignation while absent from his post on leave, but not in the United States, it is understood, unless otherwise stated, that he will return to his mission on the termination of his allotted leave and await the arrival of his successor; but if his successor reach the seat of the mission before the termination of the agent's leave of absence, his resignation and his leave of absence take effect and determine on the entrance of his successor upon the duties of his office by presentation of his credentials.

"If a diplomatic agent, having received leave of absence (with or without permission to return to the United States), tender his resignation to take effect at the expiration of his leave of absence, it may be so accepted, provided the demands of the public service do not require that the vacancy be sooner filled; and if so filled, the retiring officer's leave shall be held to terminate thereby.

"A diplomatic agent may be transferred to another post, either upon his own application, if circumstances make it advisable to accede to his request, or in the discretion of the President. If the latter be the case, his non-acceptance of the arrangement does not give him any claim to remain in his former office.

"A recall is usually accomplished at the pleasure of the President, during a session of the Senate, by sending to that body the nomination of the officer's successor. Upon the confirmation and commission of his successor the original incumbent's office ceases. He is, however, expected to remain at his post until duly relieved. If circumstances require otherwise, the case must be governed by the special instructions of the Secretary of State. In any case his official functions do not cease until he has received notification of the appointment of his successor,

either by specific instruction of the Department of State or by the exhibition of his successor's commission.

"A diplomatic officer may be recalled while on leave of absence, and his successor appointed, as above. In such case, his office, and with it his leave of absence, ceases on the receipt by him of official notification of the fact.

Printed Pers. Inst. Dip. Agents, 1885.

XI. *HOW FAR DOMESTIC CHANGE OF GOVERNMENT OPERATES TO RECALL.*

§ 87.

"The maxim of the President toward France has been to follow the Government of the people. Whatsoever regimen a majority of them shall establish is both *de facto* and *de jure* that to which our minister there addresses himself."

Letter from Dept. of State to Mr. Adams, Feb. 27, 1795, approved and applied to the duty of the U. S. minister at the Netherlands by Mr. Pickering, Sec. of State, in letter to the President, July 21, 1796. MSS. Dom. Let.

On the recognition of foreign sovereigns, see *supra*, § 70.

"The conflicting claims set up by Mr. Barrozo Pereira and Mr. Torlade d'Azambuja, the late and present representatives of the Government of Portugal near the United States, with respect to the archives of the Portuguese legation, gave rise to a legal procedure for their recovery, instituted by the latter against the former in one of the State courts of Pennsylvania. Mr. Barrozo, who declined surrendering them, was arrested on legal process, and put in confinement upon his refusing to give bail in the sum of one hundred thousand dollars for his appearance at the trial, which was to decide the rights set up by the respective parties. Under these circumstances he applied to this Department for evidence as to his public character and the exemptions attached to it, and for its interference in procuring his release from confinement. On the other hand, Mr. Torlade d'Azambuja, having made a similar application for evidence to support his own title, this Department was drawn into an interference which renders it expedient that you should be placed in possession of such facts in relation to it as will enable you to impart to the Brazilian Government, in case it should be asked, correct and circumstantial information respecting the part which was taken in the affair by this Department, and the views entertained respecting it by the President and Government of the United States.

"The only active agency of this Department in the controversy was a letter addressed to Mr. Barrozo, at the instance of Mr. Torlade, requesting him to deliver to the last-mentioned gentleman the archives of the Portuguese legation. This request not being complied with by Mr. Barrozo, who stated his reasons for not doing it, the matter in dispute was left to take its course before the court where the suit had been insti-

tuted, and which, aided by the evidence furnished from this Department with respect to the public character of the parties, quashed the writ, and released Mr. Barrozo from the process issued against him.

* * * "The court having determined to consider Mr. Barrozo as still enjoying the privileges and immunities attached to the representative character of a public minister, the attorney of the United States for the eastern district of Pennsylvania thought it his duty to institute a suit against the persons concerned in the arrest of Mr. Barrozo for an infraction of the act of Congress exempting public ministers from judicial process, which suit now awaits a decision in the due course of law."

Mr. Van Buren, Sec. of State, to Mr. Brown, Oct. 20, 1830. MSS. Inst., Am. St.

According to ordinary European practice, on the accession of a new sovereign, new letters to him are forwarded to ministers resident at his seat of Government.

Mr. Fish, Sec. of State, to Mr. Schenck, Apr. 27, 1875. MSS. Inst., Gr. Brit.

This question came before the district court of Philadelphia, which held that a chargé d'affaires who has returned his exequatur and obtained his passports cannot be sued in trover for the archives of the mission by a new minister who represents an incoming adverse dynasty, though such new minister is recognized by the Secretary of State, the reason being that the outgoing minister is entitled as a returning minister to his privilege from suit.

D'Azambuja *v.* Pereira, 1 Miles (Phil.), 366.

It was further held that the recognition of a foreign minister is conclusive evidence of the authenticity and validity of his credentials, and that where a diplomatic representative announces the cessation of his functions by reason of a change of authority in his country and obtains his passports, he has not waived his privilege as a returning minister, and the process should be quashed. It has been also held that such a suit, as in this case, is no evidence that the sovereign has deprived the chargé of his privilege, even if it were competent so to do.

Torlade *v.* Barrozo, 1 Miles (Phil.), 361.

Subsequently the attorney who issued the capias was indicted under the act of Congress and tried in the Federal court. The case went to the Supreme Court of the United States on a difference of opinion, and a *nolle prosequi* was entered by direction of the President.

U. S. *v.* Phillips, 6 Pet., 776.

For other points in this controversy, see 8 J. Q. Adams' Mem., 221, *ff.*

A change in the Government by which a foreign minister is accredited suspends the activity of his functions, but does not necessarily terminate them, and during such suspension he is entitled to the immunities of a public minister. Mr. Barrozo Pereira, the Portuguese chargé d'affaires, on the 30th October, 1829, was consequently held entitled to

the respect and immunities of a public minister, notwithstanding the assumption of regal power in Portugal by Don Miguel in exclusion of Don Pedro IV.

2 Op., 290, Berrien, 1829.

As between the American Republics in which the executive power is permanent and continuous, the functions of a public minister do not cease on a mere change of President. *A fortiori* the Mexican commissioner, Mr. Salazar, appointed by President Santa Anna to act on behalf of Mexico in defining the cession of territory to the United States, under the Mesilla treaty of December 30, 1853, is not deprived of his authority by the resignation of President Santa Anna and the installment of a successor.

7 Op., 582, Cushing, 1855.

XII. *DIPLOMATIC GRADES.*

§ 88.

By the congresses of Vienna and Aix-la-Chapelle four distinct kinds of embassies were recognized:

(1) "Ambassadeurs," legates, and nuncios of the Pope. These are regarded as the personal representatives of the sovereign by whom they are sent.

(2) Ministers plenipotentiary and envoys.

(3) Ministers resident.

(4) Chargés d'affaires, who are appointed by the minister of foreign affairs, while the three classes first above named are commissioned nominally or actually by the sovereign.

Whart. Com. Am. Law, § 169.

As to rules of precedence of congress of Vienna, see Blackwood's Mag. for Dec., 1878, vol. 114, p. 681.

That diplomatic agents are not to appear officially but with their full titles, and to negotiate only with ministers of equal rank, see 7 John Adams' Works, 451, 452; 8 id., 4.

"In the practice of our Government there is no immediate connection or dependence between persons holding diplomatic and consular appointments in the same country; but, by the usage of all the commercial nations of Europe, such a subordination is considered as of course. In the transaction of their official duties the consuls are often in necessary correspondence with their ministers, through whom alone they can regularly address the supreme Government of the country wherein they reside, and they are always supposed to be under their directions. You will accordingly maintain such correspondence with the consuls of the United States in France as you shall think conducive to the public interest; and in case of any vacancy in their offices, which may require a temporary appointment of a person to perform the duties of the consulate, you are authorized, with the consent of the Government to

which you are accredited, to make it, giving immediate notice of it to this Department."

Mr. Adams, Sec. of State, to Mr. Brown, Dec. 24, 1823. MSS. Inst., Ministers.

A report by Mr. Clay, Secretary of State, January 31, 1827, on the position of chargés d'affaires is contained in House Doc. No. 452, 19th Cong., 2d sess. In this report, after enumerating a series of cases of persons appointed as chargés d'affaires, with their respective terms of office, Mr. Clay proceeds as follows:

"Most of the preceding appointments of chargés d'affaires were made whilst we had ministers appointed to reside near the same Government. Mr. Purviance was so appointed by Mr. Monroe, being the regular minister of the United States in London at the time. Mr. Erving, being the secretary of legation at Madrid, was intrusted with the charge of our affairs until the arrival of Mr. Bowdoin, our minister. Mr. Harris, at St. Petersburg, was left in charge of our affairs whilst Mr. Adams was absent on the duty of assisting in the negotiation of peace with Great Britain. Mr. Lawrence was left chargé d'affaires by Mr. Russell whilst this gentleman was absent from Stockholm on the same service of treating of peace. Mr. Jackson was left chargé at Paris after Mr. Gallatin's appointment, but before his arrival in France, as the minister of the United States. Mr. Brent was intrusted with the charge of our affairs during Mr. Forsyth's return to the United States. In the same character, at Stockholm, Mr. Hughes was left by Mr. Russell on his return home. Mr. Pinkney was left by Mr. Campbell in charge of our affairs in July, 1820, Mr. Middleton having been appointed minister the preceding April. Mr. Appleton was left in charge of our affairs by Mr. Forsyth, at Madrid, in March, 1823, Mr. Nelson having been appointed minister the preceding January. Mr. Watts was left at Bogota, in charge of our affairs, in the year 1825, during Mr. Anderson's absence on a visit to the United States. And, lastly, Mr. John A. King was left by Mr. Rufus King in charge of our affairs after the appointment but before the arrival of Mr. Gallatin at London. The necessity of confiding temporarily to a chargé the affairs of a Government, which is ordinarily represented by a minister plenipotentiary, arises out of the absence of a minister, no matter from what cause. It is supposed not to be affected by the fact of a minister's having notified his intention to return and the appointment of his successor.

"The authority under which the above appointments were made is believed to be furnished by the Constitution of the United States, and the public law and usage of nations. So important is it regarded to preserve, without interruption, the diplomatic intercourse between nations which are mutually represented by ministers, that upon the death of a minister the secretary of legation becomes, by established usage, *ipso facto*, chargé d'affaires until his Government is advised and

provides for the event. The period during which they respectively continued to act in the character of chargé d'affaires will be seen by an inspection of the annexed abstract from the books of the Treasury, marked A, to which a reference is respectfully requested.

"The duties to be performed by a chargé d'affaires, so appointed, are to be found in the same public law and usage, and may be stated, in the general, to be the same as those of the minister whose place he supplies. He transacts the ordinary business of the legation; keeps its archives and an office; corresponds with the Government where he is accredited, and with his own; and sustains an expense and maintains an intercourse with the diplomatic corps corresponding to the new station to which he is elevated.

"The compensation received by the several persons so appointed (with the exception of Mr. John A. Smith and Mr. Watts, whose accounts are not yet closed, but will be finally liquidated on the same principles), may be seen in the above extract from the Treasury. From that abstract it appears: First, that the allowance of salary in the character of chargé, in the cases there stated, has been uniform; second, that the allowance of an outfit has been most usually, but not always, made; third, that in some instances the temporary appointment has been continued after the intervention of a session of the Senate, as in the cases of Mr. Purviance, Mr. Russell, Mr. Lawrence, Mr. Jackson, Mr. Brent, Mr. Hughes, and Mr. Sheldon, and in two cases (those of Mr. Erving and Mr. Harris) after the intervention of several sessions of the Senate; and fourth, that in the case of Mr. John A. King, the allowance made to him was a medium between the highest and lowest allowances that had been previously made. The highest was made in the cases of Mr. Russell and Mr. Jackson, to each of whom, besides the outfit and salary of a chargé, a quarter's return salary was allowed. Mr. King was not allowed salary as a chargé during the absence of Mr. Gallatin on his visit to Paris last fall, nor was he allowed a quarter's return salary as chargé. He was, moreover, the bearer of a convention, the first intelligence of the conclusion of which reached the Department by his delivery of the instrument itself. Such a service is always regarded in the transactions of Governments as one of peculiar interest. He might have been, but was not, allowed the usual compensation made to bearers of dispatches."

6 Am. St. Pap. (For. Rel.), 555.

"The object of diplomatic missions is to adjust differences and conduct affairs between Governments in regard to their political and commercial relations, and to furnish the Government at home with information touching the country to which the mission is accredited more full and accurate than might be obtained through the ordinary channels, or more promptly than the same information might otherwise be received. The grade of a mission may be higher or lower, according to the estimate of its importance.

"As a general rule, no Government sends to, or at least continues in, another country a minister of a higher grade than that country may reciprocate. This rule, however, is by no means invariable, and for various reasons it seems to be proper to leave it to the President to determine the cases in which exceptions ought to be made. There are not sufficient advantages in having ministers of the highest grade accredited to all Governments—the most inconsiderable as well as the most important—to justify a departure from a long prevalent and common usage, with many good reasons to sustain it."

Mr. Marcy, Sec. of State, to Mr. Pennington, chairman of the Committee on Foreign Affairs, House of Representatives, May 23, 1856. MSS. Report Book.

"Your dispatch No. 61, of the 16th ultimo, relative to the question of precedence which has arisen among the representatives of foreign powers of Tangier, has been received. In reply I have to state that every nation may consult its own pleasure in regard to the grade of its diplomatic or other representative in a foreign country. That grade must be presumed to be measured by its sense of the importance of its relations with the power to which the representatives may be accredited.

"Consuls have diplomatic functions in the Barbary states. The United States consul is accredited to the Emperor of Morocco. His predecessors were accredited in the same way, and the consuls at Tripoli, Tunis, and in Egypt are, respectively, accredited to the heads of the Governments of those countries.

"It is customary, where the rules of the treaty of Vienna and the protocol of Aix-la-Chapelle are acknowledged, for the eldest of the chief grade to take precedence of all others, and the eldest also when they are all of the same grade. Is this rule binding and operative at Tangier?

"The French have thought proper to accredit a minister plenipotentiary to the Emperor of Morocco, who resides at Tangier, and who claims precedence over the representatives of other Governments there solely in virtue of the superiority of his official grade. Is this claim indefeasible? The rules in regard to precedence above referred to, having been embodied in a treaty and in a protocol, may be technically binding only on the parties to those instruments. The United States were not a party to them. The Emperor of Morocco might disregard them for a similar reason. Those rules, however, may be said to have been merely a formal recognition by the chief powers of Europe of a custom which had been the law of nations upon the subject ever since diplomacy began in modern times. As such they have hitherto been practically accepted even by this Government, whenever it may have had occasion to send representatives of any of the grades to which they refer. We have never had any officer at Tangier of a higher grade than consul. If, however, we should accredit a minister plenipotentiary

the Emperor of Morocco, we certainly should expect him to have precedence on public occasions, and in official proceedings, over the representatives of lower grade from other powers. Should not the same privilege be conceded to other states?

"The advantage, if it be one, is accidental now in the case of France. It may be claimed by ourselves, or by Mexico, or by Switzerland, tomorrow.

"If, as cannot be denied, the grade of a diplomatic agent implies the opinion entertained by his Government of the importance of his relations with the Government to which he may be accredited, this may, it seems, be properly allowed. It may, however, be taken for granted that, whatever may be the grade of such an agent, his social or public efficiency is by no means always in proportion to his grade, but will be influenced by the comparative importance of the country he may represent, and will also comport with the strength of his character and of his abilities.

"It is not supposed that the tardiness of the minister of France in asserting the privileges of his grade precludes him from assuming them whenever he may deem it advisable.

"Under these circumstances, the impression is entertained that it will not be contrary to your official dignity, or that of the Government which you represent, to acquiesce in the application at Tangier of the conventional rule which prevails here and everywhere else."

Mr. Seward, Sec. of State, to Mr. McMath, Dec. 30, 1868. MSS. Inst., Morocco; Dip. Corr., 1868.

"A chargé d'affaires can only be legally and properly recognized when officially accredited to the Department by the minister of foreign affairs of the country which he claims to represent."

Mr. Fish, Sec. of State, to Mr. Squier, Nov. 4, 1869. MSS. Notes, Honduras.

"Whilst in the official and private intercourse between a minister and his secretaries it is undoubtedly among the first of his duties to observe a frank, courteous, and kindly demeanor towards them, on the other hand, it is no less incumbent on the secretaries to fulfill with alacrity and dispatch, in the best manner they are able, the general and occasional instructions of the minister touching the affairs of the legation, and to maintain in their intercourse with him an unvarying due observance of all the deference which characterizes the gentleman, and which is prescribed by the rules of good breeding. No servility, however, on their part, or any compromise of that self-respect which they owe themselves, is expected."

Mr. Fish, Sec. of State, to Mr. Vignaud, Jan. 18, 1876. MSS. Inst., France.

A "political agent," sent as such by a foreign Government to the United States, is not to be regarded as a diplomatic character,

to the immunities of such, even though he is at the same time consul-general.

Mr. Blaine, Sec. of State, to Mr. Totten, Apr. 12, 1881. MSS. Dom. Let.

"As long as the minister is present the secretary of legation is not recognized by any foreign Government whatever as being authorized to perform a single official act other than as directed by the minister himself."

Mr. Frelinghuysen, Sec. of State, to Mr. Wurts, Feb. 28, 1883. MSS. Inst., Russia.

The Department cannot, under present circumstances, "in justice to its ministers abroad, ask Congress to give them higher rank with their present salaries; neither could it with propriety appeal to Congress for an allowance commensurate with the necessary mode of life of an ambassador."

Mr. Frelinghuysen, Sec. of State, to Mr. Hunt, Jan. 31, 1884. MSS. Inst., Russia.

"The question of sending and receiving ambassadors, under the existing authorization of the Constitution and the Statutes, has on several occasions had more or less formal consideration, but I cannot find that at any time the benefits attending a higher grade of ceremonial treatment have been deemed to outweigh the inconveniences which, in our simple social democracy, might attend the reception in this country of an extraordinarily foreign privileged class.

"It seems hardly necessary to point out in detail considerations which will doubtless readily suggest themselves to your discernment.

"I infer from your statement that the position of the United States minister in the order of precedence, especially after a change in the mission, when the newcomer necessarily falls to the foot of the list, may entail delay in obtaining access to the secretary of foreign affairs in the ordinary transaction of business. This is regulated in Washington and in several other capitals by the adoption of the rule *detur priori*, with entire acceptability.

"In 1871, when Mr. George Bancroft was minister of the United States at Berlin, the question of his yielding the *pas* at the foreign office in everyday intercourse to representatives of higher grade or longer residence came up for consideration. I inclose transcript of a dispatch from Mr. Bancroft, reporting the rule then adopted by Prince von Bismarck."

Mr. Bayard, Sec. of State, to Mr. Phelps, July 2, 1885. MSS. Inst., Gr. Brit.

The rule adopted by Prince von Bismarck, as reported in Mr. Bancroft's dispatch of January 20, 1872, is as follows:

"The chief of a mission who arrives first [at the Foreign Office] is first admitted, be his rank that of ambassador, minister or chargé."

"For the sake of convenience and uniformity in determining the relative rank and precedence of diplomatic representatives, the Depart-

ment of State has adopted and prescribed the seven rules of the congress of Vienna, found in the protocol of the session of March 9, 1815, and the supplementary or eighth rule of the congress of Aix-la-Chapelle of November 21, 1818. They are as follows:

"'In order to prevent the inconveniences which have frequently occurred, and which might again arise, from claims of precedence among different diplomatic agents, the plenipotentiaries of the powers who signed the treaty of Paris have agreed on the following articles, and they think it their duty to invite the plenipotentiaries of other crowned heads to adopt the same regulations:

"'ARTICLE I. Diplomatic agents are divided into three classes: That of embassadors, legates, or nuncios; that of envoys, ministers, or other persons accredited to sovereigns; that of chargés d'affaires accredited to ministers for foreign affairs.

"'ART. II. Embassadors, legates, or nuncios only have the representative character.

"'ART. III. Diplomatic agents on an extraordinary mission have not, on that account, any superiority of rank.

"'ART. IV. Diplomatic agents shall take precedence in their respective classes according to the date of the official notification of their arrival. The present regulation shall not cause any innovation with regard to the representative of the Pope.

"'ART. V. A uniform mode shall be determined in each state for the reception of diplomatic agents of each class.

"'ART. VI. Relations of consanguinity or of family alliance between courts confer no precedence on their diplomatic agents. The same rule also applies to political alliances.

"'ART. VII. In acts or treaties between several powers which grant alternate precedence, the order which is to be observed in the signatures shall be decided by lot between the ministers.

"'ART. VIII. It is agreed that ministers resident accredited to them shall form, with respect to their precedence, an intermediate class between ministers of the second class and chargés d'affaires.'

"The representatives of the United States are of the second, the intermediate, and the third classes, as follows:

"A. Envoys extraordinary and ministers plenipotentiary. Special commissioners, when styled as having the rank of envoy extraordinary and minister plenipotentiary.

"B. Ministers resident.

"These grades of representatives are accredited by the President.

"C. Chargés d'affairés, commissioned by the President as such, and accredited by the Secretary of State to the minister for foreign affairs of the Government to which they are sent.

"D. Chargés d'affaires *ad interim*. These are in most cases secretaries of legation, who, *ex officio*, act as temporary chiefs of mission in the absence of the minister, and need no special letter of credence. In the absence of a secretary of legation, the Secretary of State may designate any competent person to act *ad interim*, in which case he is specifically accredited by letter to the minister for foreign affairs.

"When the office of consul-general is added to that of minister resident, chargé d'affaires, or secretary of legation, the diplomatic rank is regarded as superior to the consular rank. The officer, however, will follow the Consular Regulations in regard to his consular duties and official accounts, keeping correspondence in one capacity separate from

correspondence in the other. The allowance for rent in such combined offices is, as a rule, based upon the entire salary."

Printed Pers. Inst., Dip. Agents, 1885.

The expression "ambassadors and other public ministers," in the Constitution, must be understood as comprehending all officers having diplomatic functions, whatever their title or designation.

7 Op., 186, Cushing, 1855.

The commissioner of the United States in China is a diplomatic officer by the law of nations, and a judicial officer by treaty and statute.

Ibid.

"With reference to diplomatic rank, I only heard last night for the first time that the Duke of Sutherland had, some time ago, addressed a formal remonstrance to Palmerston against foreign ministers (not ambassadors) having place given them at the palace (which means going out to dinner over himself *et suos pares*), a most extraordinary thing for a sensible man to have done, especially in such high favor as his wife and her whole family are. He got for answer that Her Majesty exercised her own pleasure in this respect in her own palace. The rule always has been that ambassadors (who represent the persons of their sovereigns) have precedence of everybody; ministers, who are only agents, have not; but the Queen, it appears, has given the *pas* to ministers plenipotentiaries, as well as to ambassadors, and ordered them to go out at her dinners before her own subjects of the highest rank."

In a note it is said to have been "afterward settled by Her Majesty that foreign ministers should take precedence *after* dukes and before marquesses."

Greville's Mem., 2d series, Mar. 29, 1860. As to precedence socially, see *infra*, § 107*a*.

"At very many foreign offices the rule 'first come first served' is not observed; but an envoy or a minister, though he may have been waiting hours in the ante-room for an important affair, must give place to an ambassador who has come in at the moment; and at Constantinople it is even expected that, should a minister be in conversation with the minister of foreign affairs or the grand vizier, he should withdraw and wait whenever an ambassador may be announced. In some countries a different rule is observed. In Russia it has been for many years the custom for the minister to receive the foreign representatives in the order in which they arrive at his office, without regard to their rank. This rule was brought into force at Berlin, owing to a personal dispute between Mr. Bancroft, our minister, and the British ambassador. Mr. Bancroft, after having waited a long time for an audience, was on one occasion obliged to yield to the British ambassador, who had that moment arrived. As the ambassador was personally disagreeable to the chancellor, and Mr. Bancroft was a friend of his, a representation of the injustice done to the United States and its representative brought about a change of rule."

Schuyler's Am. Diplom., 113.

Mr. Schuyler (American Diplomacy, 114 *ff.*) argues with much earnestness for the appointment, if not of ambassadors, at least of diplomatic agents of uniformly high grade.

XIII. *CITIZENS OF COUNTRY OF RECEPTION NOT ACCEPTABLE.*

§ 88a.

It is considered by the Government not advisable to receive a citizen of the United States as the permanent diplomatic representative of a foreign power. It would be otherwise as to special purposes not involving continuous abode in the country.

Mr. Fish, Sec. of State, to Mr. Squier, Mar. 5, 1870. MSS. Notes, Honduras.

"This Government objects to receiving a citizen of the United States as a diplomatic representative of a foreign power. Such citizens, however, are frequently recognized as consular officers of other nations, and this policy is not known to have hitherto occasioned any inconvenience."

Mr. Evarts, Sec. of State, to Mr. Logan, Sept. 19, 1879. MSS. Inst., Cent. Am.

"Although the usage of diplomatic intercourse between nations is averse to the acceptance, in the representative capacity, of a person who, while native-born in the country which sends him, has yet acquired lawful status as a citizen by naturalization of the country to which he is sent, as is understood to be the case with your worthy self, I am not disposed to interpose any technical obstacle, however sound, to the immediate renewal of diplomatic relations with Venezuela, and it will give me much pleasure to receive from your hands the original letters of credence you bear, at such time to-morrow, the 21st instant, between 12 and 3 o'clock, as may be most convenient to you."

Mr. Evarts, Sec. of State, to Mr. Camacho, Apr. 20, 1880. MSS. Notes, Venez.

XIV. *DIPLOMATIC CORRESPONDENCE CONFIDENTIAL, EXCEPT BY ORDER OF DEPARTMENT.*

§ 89.

"No ground of support for the Executive will ever be so sure as a complete knowledge of their proceedings by the people, and it is only in cases where the public good would be injured, and *because* it would be injured, that proceedings should be secret. In such cases it is the duty of the Executive to sacrifice their personal interests (which would be promoted by publicity) to the public interests."

Mr. Jefferson, Sec. of State, to the President, Dec. 2, 1793. 4 Jeff. Works, 89.

The publication in the newspapers by a foreign minister in the United States of an official letter to the Secretary of State is an improper act, which will justify alike publication by the Secretary of his reply.

Mr. Pickering, Sec. of State, to Mr. Pinckney, Nov. 5, 1796. MSS. Inst, Ministers.

For instances of the publication of controversial diplomatic notes before they had been received by the parties to whom they were addressed, see 11 J. Q. Adams' Mem., 360.

As to tone of correspondence, see *infra*, § 107.

The publication, by a foreign minister to the United States, "of his correspondence with the Department without the authority of his Government, is believed to be unexampled in the history of diplomacy and not decorous to the United States."

Mr. Forsyth, Sec. of State, to Mr. Ellis, Dec. 9, 1836. MSS. Inst., Ministers.

As to Mr. Webster's criticism on the action of Mr. Cass, in reference to publication of official action, see 6 Webster's Works, 383.

By the rules of the Department papers connected with pending diplomatic negotiations cannot be made public unless the documents are called for by Congress with the usual limitations.

Mr. Marcy, Sec. of State, to Mr. McKeon, Feb. 8, 1854. MSS. Dom. Let.

"The cipher now used by this Department has been used for the last forty years at least, and is framed upon a system which is considered to render it entirely inscrutable to any one not having the key. No doubt offers of other systems have often been made to the Department since the one now in use was adopted. Indeed, the chief clerk, who has been an officer of the Department for about twenty-five years, informs me that such offers have averaged at least four a year within that time."

Mr. Marcy, Sec. of State, to Mr. Breckenridge, Dec. 22, 1853. MSS. Dom. Let.

"Your idea of improving our foreign diplomacy by having each minister apprised of the principal objects pursuing at every court is excellent. I urged something analogous to it upon Mr. Forsyth, while I was at St. Petersburg, and I pressed it upon Mr. Webster when Secretary of State. It is the great practical advantage enjoyed by the diplomats of Russia. It produces a harmony of action and *inculcation* that, in a long run, tells conclusively. Mr. Webster's difficulty was in the great labor which it must throw upon somebody in the Department already overtaxed. How that may be, I can't pretend to say, but if there be any use at all in having missions dotted over Europe, they might as well be made to co-operate in the general policy of the Government as run the risk of impeding it by a want of information from the fountain-head."

Mr. Dallas to Mr. Cass, Sec. of State, Oct. 13, 1857. 1 Dallas, Letters from London, 317.

Communications to the Government of the United States by its foreign ministers are so far privileged that, though published by order of Congress, the Government cannot sanction criticisms of them by other foreign powers.

Mr. Fish, Sec. of State, to Mr. Jay, July 11, 1870. MSS. Inst., Austria.

"The Department gives to the consideration and preparation for publication of the dispatches of its agents abroad every attention, with the object of guarding against the publication of their personal views,

which might, if known, expose them to criticism or censure in the land of their official residence. In an examination of the blue books of other Governments it is believed that far more care is here exercised in this respect than in other countries. It is, of course, impossible to prevent malicious or honestly mistaken perversion of such publication by outside parties. * * *

"If the propriety of making such matters public in due time be left to the discretion of the Secretary of State, it is, indeed, possible that his views as to what parts of such communications may or may not be unobnoxious to adverse criticism may differ from those of the writer. The latter being brought into direct contact with the foreign adverse elements surrounding him, is naturally often better qualified to judge of what may be liable to be used by unfair partisanship to his discredit. Fully aware of this, the Department always gives the most considerate attention to any intimation its agents may convey that their dispatches are to be deemed confidential, and it rarely happens that public interests are so grave as to override such intimations."

Mr. Davis, Acting Sec. of State, to Mr. Sargent, May 23, 1883. MSS. Inst., Germ.

The publication of diplomatic correspondence in its archives is a matter at the discretion of each particular Government, and for a Government to publish at its discretion letters to it from foreign ministers is a question for its exclusive determination.

Mr. Frelinghuysen, Sec. of State, to Mr. Morgan, Aug. 28, 1883. MSS. Inst., Mex.

"The attention of diplomatic agents is especially called to the provision of law by which they are forbidden to correspond in regard to the public affairs of any foreign Government or in regard to any matter which may be a subject of official correspondence or discussion with the Government to which they are accredited, with any newspaper or other periodical, or with any person other than the proper officers of the United States."

Printed Pers. Inst., Dip. Agents, 1885.

"Among the most important general duties of a diplomatic representative of the United States is that of transmitting to his own Government accurate information concerning the policy and views of that to which he is accredited, in its important relations with other powers. To gain this information requires steady and impartial observation, a free though cautious correspondence with other agents of the United States abroad, and friendly social relations with the members of the diplomatic body at the place of his residence.

"In their regular correspondence with the Department, diplomatic representatives of the United States will transmit early copies of all official reports and such information relating to the Government, finances, commerce, arts, sciences, agriculture, manufactures, mining, tariffs, taxation, population, laws, judicial statistics, and to the condition of the countries where they reside, as may be useful. In dispatches

communicating such information, however, political affairs should not be referred to, but should be reserved for separate communications. Books of travel, history, and all such as relate to matters of political importance, maps published by authority of the state or distinguished by extraordinary reputation, and new publications of useful discoveries and inventions, will always be acceptable acquisitions to this Department. Expenditures for such purpose should, in all cases, form a separate charge against the Department; but none should be incurred without its previous express direction, unless in a case of absolute necessity.

"With the exception of the correspondence with the Treasury Department respecting accounts, and such other correspondence as special provisions of law or instructions of this Department may require, no correspondence will be held by diplomatic or consular representatives of this Government with any Department other than the Department of State. This injunction is especially applicable to communications to or from subordinates of other Departments. This rule is, however, not intended to prohibit a diplomatic agent from answering any reasonable inquiry of an officer of another Department unless the inquiry shall have been referred to the Department of State, but he may, if circumstances permit, answer such inquiries without awaiting special instructions; and in so doing he should invariably send his reply, unsealed and accompanied by a copy for the files, to the Secretary of State, who will decide whether, and how, it shall be forwarded to the person addressed.

"Drafts of correspondence sent out should not be allowed to accumulate, but should be destroyed as soon as accurately transcribed in the proper record books.

"It is the particular desire of the Department that no diplomatic agent, or any officer of the legation, should retain or carry away with him drafts or copies of his official correspondence. Obedience to this request is enjoined, inasmuch as it has sometimes happened, and may at any time happen, that on the death of the possessor of such copies, they pass into the hands of others not so scrupulously observant of their confidential character.

"Under no circumstances should any public or official paper be published without the express consent of the Department of State.

"Voluntary recourse to private letters to the Secretary of State or to officers of the Department of State, on topics relating to the official business of the legation, is discouraged.

"It is considered best that all communications of diplomatic officers to the Department of State should be in the form of regular dispatches. Where the whole dispatch appears to the writer to be necessarily of a reserved or secret character, it should be conspicuously marked as 'Confidential.' Where one or more paragraphs of a dispatch seem to require any precaution against undue publicity, a red line may be drawn to mark them and the word "confidential" plainly written in the margin. The Secretary of State, however, reserves the ultimate right to decide whether the suggested reserve is necessary in the public interest."

Ibid.

"Even with all the care that can be exercised, dispatches are not infrequently published which get their writers into trouble. It may be remembered, for instance, that the late Mr. Marsh became involved in an annoying difficulty in Italy on account of the publication of a sentence (which he had even written in cipher) in one of his confidential dispatches, questioning the sanity of the King. Of still more recent

date is the difficulty with Germany, arising from the publication of a dispatch of our minister on the pork question, which resulted ultimately in his recall, disguised under the name of transfer."

Schuyler's Am. Diplom., 34.

(1) CONFINED TO OFFICIAL BUSINESS.

§ 89a.

The judiciary alone are competent to determine most questions of law in the United States, and the Executive will decline to give an opinion as to such questions when appealed to by a foreign sovereign or his minister.

Mr. Jefferson, Sec. of State, to the minister of France, Mar. 20, 1793. MSS. Notes, For. Leg. To same effect, see Mr. Jefferson to Mr. Hammond, Apr. 18, 1793. MSS. Notes, For. Leg.

"It is not competent for the Government of the United States to interfere with the legislation of the respective States in relation to the property of foreigners dying *ab intestato*, or in regard to inheritances of any kind, nor has Congress authority, under the Constitution, to pass a general law, as you seem to suppose, upon the subject."

Mr. Marcy, Sec. of State, to Mr. Fay, June 19, 1854. MSS. Inst., Switz.

"There has for many years been established in this Department a rule which inhibits the Secretary of State from giving letters of introduction, circular or otherwise, for persons going abroad, to the ministers or consuls of the United States."

Mr. Seward, Sec. of State, to Mr. Spencer, June 20, 1863. MSS. Dom. Let.

"We receive from all monarchical states letters announcing the births and deaths of persons connected nearly with the throne, and we respond to them in the spirit of friendship and in terms of courtesy. On the contrary, on our part, no signal incidents or melancholy casualties affecting the Chief Magistrate or other functionaries of the Republic are ever officially announced by us to foreign states. While we allow to foreign states the unrestrained indulgence of these peculiar tastes, we carefully practice our own. This is nothing more than the courtesy of private life extended into the intercourse between nations."

Mr. Seward, Sec. of State, to Mr. Webb, July 24, 1865. MSS. Inst., Brazil.

"It is the long-established practice of this Department to decline giving advice upon a hypothetical case arising out of our foreign relations."

Mr. Fish, Sec. of State, to Mr. Harriman, Apr. 27, 1870. MSS. Dom. Let.

"The Department, by a new regulation, has ceased to give personal letters of introduction to its officers abroad, except in special cases where they may be necessary to the conduct of the public business."

Mr. Blaine, Sec. of State, to Mr. Morse, Mar. 24, 1881. MSS. Dom. Let.

"The practice of granting general introductory letters to facilitate travel will be discontinued."

Circular, Mr. Blaine, Sec. of State, Apr. 25, 1881. MSS. Inst., Arg. Rep.

(2) USUALLY IN WRITING.

§ 89*b*.

The misunderstandings likely to result from reliance on oral communications between Secretaries of State and foreign ministers are noticed, though with his usual suppressed sarcasm, in a letter from Mr. Canning to Mr. Pinkney, then minister at London, September 23, 1808.

3 Am. St. Pap. (For. Rel.), 230. Mr. Pinkney's reply is given in same work, 233.

On October 9, 1809, Mr. Robert Smith, then Secretary of State, proposed to Mr. Jackson, British minister at Washington, that their correspondence should be in writing, and on this being objected to by Mr. Jackson, Mr. Smith, on October 19, cited the similar proposition previously made by Mr. Canning to Mr. Pinkney. The position that important diplomatic correspondence is to be in writing is reiterated by Lord Wellesley in an interview with Mr. J. S. Smith, chargé d'affaires of the United States at London, on June 16, 1811.

Mr. J. S. Smith to the Sec. of State, June 16, 1811. MSS. Dispatches Gr. Brit. 3 Am. St. Pap. (For. Rel.), 421. As to the correspondence with Mr. Jackson, and his subsequent recall, see *supra*, § 84; *infra*, § 107.

"No foreign Government or its representative can take just offense at anything which an officer of this Government may say in his private capacity. Official communications only are to be regarded as indicating the sentiments and views of the Government of the United States."

Mr. Webster, Sec. of State, to Mr. McCurdy, Jan. 8, 1852. MSS. Inst. Austria. Senate Ex. Doc. No. 92, 32d Cong., 1st sess.

That official communications must be to the Secretary, see *supra*, § 79.

As to form of conducting business, see *infra*, § 107.

"In connection with your dispatch permit me to offer you a word of caution with regard to cipher telegrams. You should never give both the cipher and the text, as in the present instance. The latter is all that is requisite. * * * Such telegrams should either be paraphrased or their import conveyed in a written note, in order that no clue whatever to the Department's cipher may be obtained."

Mr. Bayard, Sec. of State, to Mr. Morgan, May 26, 1886. MSS. Inst., Mex.

XV. *DIPLOMATIC AGENTS TO ACT UNDER INSTRUCTIONS.*

§ 90.

For personal instructions, see § 89.

A minister, unless in an extraordinary case of an indignity offered to him in his character as an individual, or as a minister, cannot, without the authority of his Government, threaten to break off diplomatic intercourse with the sovereign to whom he is sent.

Mr. Marcy, Sec. of State, to Mr. Jackson, Apr. 8, 1856. MSS. Inst., Austria.

When war was carried on between South American countries in which we were represented by resident ministers, and in whose waters we had ships of war, watching our interests, it was held "inconvenient to give specific instructions for the Government of either its (our) political representatives or its naval agents in regard to many possible contingencies. Powers concerning political questions distinguished from naval affairs are intrusted to the care of the ministers of the United States; and the President's instructions are communicated through this Department. Responsibilities of a peculiar character are devolved upon the commander of the squadron; and the President's instructions are conveyed through the Navy Department. * * * In the absence of instructions, the agents of the two classes, if practicable, will confer together and agree as to any unforeseen emergencies which may arise, and in regard to which no specific instructions for the common direction of both may be given by the President."

Mr. Seward, Sec. of State, to Mr. Asboth, May 18, 1867. MSS. Inst., Arg. Rep.

"Diplomatic agreements, between agents of foreign powers, hastily gotten up in a foreign country, under the pressure of revolutionary dangers, may be entirely erroneous in their objects, as they must be incomplete in form, and unreliable for want of adequate authority. Moreover, they unavoidably tend to produce international jealousies and conflicts. You will, therefore, carefully abstain from entering into any such negotiations, except in extreme cases, to be immediately reported to this Department."

Mr. Seward, Sec. of State, to Mr. Pruyn, Aug. 22, 1868. MSS. Inst., Venez. See *infra*, § 102.

The inconvenience of disagreement between a diplomatic agent in a foreign land and the commander of our naval forces "is less than the inconveniences which must result from giving authority to a minister in one state to control the proceedings of a fleet of whose condition he is not necessarily well informed, and whose prescribed services are required to be performed not only in the vicinity of its minister, but also in distant fields over which he has no supervision. Nor would it be more expedient to give a general authority to the commanding officer of a squadron to control or supersede the proceedings of political representatives of the United States in the several states which he might have occasion to visit."

Mr. Seward, Sec. of State, to Mr. Asboth, May 18, 1867. MSS. Inst., Arg. Rep.

As to Mr. Gallatin's complaints of the rigidity of his instructions, see letters to Mr. J. Q. Adams, 2 Gallatin's Writings. See also Mr. Webster's letters to Mr. Cass, Nov. 14, 1842; MSS. Inst., France; 6 Webster's Works, 369.

As to Mr. Jefferson's withdrawal of treaty with England by Messrs. Monroe and Pinkney, in consequence of non-conformity with instructions, see *infra*, § 150*b*. Monroe Pap., Dept. of State.

VI. *COMMUNICATIONS FROM FOREIGNERS ONLY TO BE RECEIVED THROUGH DIPLOMATIC REPRESENTATIVES.*

§ 91.

That self-constituted missions to foreign states are illegal, see *infra*, § 109.

General Washington, when President, declined to receive publicly essrs. Talleyrand, Beaumetz, and Liancourt, who were then refugees om France, on the ground that "the French Republic would have arnt with disgust that they had been received by the President. He aving resolved not to receive them, I held it to be my duty to do vionce to my individual regard for their characters by merging it in polital considerations."

Mr. Randolph, Sec. of State, to Mr. Pinckney, Dec. 23, 1794. MSS. Inst., Ministers. They had letters of introduction from Messrs. Pinckney and Jay. As to Washington's reception of "young Lafayette," see App., vol. III, § 91.

The Department of State can receive no communication from subcts of another country on international matters, except through the inister of such country.

Mr. Monroe, Sec. of State, to Admiral Cochrane, Apr. 5, 1815. MSS. Notes, For. Leg.

"Several days ago I received information through a confidential chanl that Joseph Bonaparte, with several companions, had arrived *incog.* New York. * * * And yesterday I received the further inforation that he was on his way, accompanied by Lewis, to report himself me personally, still under this disguise. * * * Whatever motives ay have produced this step, the palpable impropriety of it, especially its success would involve my participation in a clandestine transacn, determined me at once to guard against it. I have accordingly itten to Mr. Rush to have the travelers diverted from their purpose their arrival at Washington."

Mr. Madison, President, unofficial, to Mr. Monroe, Sec. of State, Montpelier, Sept. 12, 1815. Monroe Pap., Dept. of State.

"To have come at any time to the seat of your public residence with e ulterior view of a personal visit, without a previous sanction derived rough the usual channel, might have been thought not entirely reectful, if prudent. But so to invade the sanctity of your domestic treat really looks to me, independent of all other considerations, as arcely less than an outrage. * * * I remember that when Talleynd was in Philadelphia, as ex-bishop of Autun, General Washingn declined being visited by him, although he made known a wish to ait on him."

Mr. Rush, Atty. Gen., to Mr. Madison, President, (unofficial), Sept. 17, 1815. Monroe Pap., Dept. of State. See, as to the reception of Kossuth, *supra*, § 48.

"Although it is usual for this Department to forward letters to perns abroad, which may be sent hither by members of Congress for at purpose, the punctilio required in Europe in communication with

crowned heads renders it necessary to make letters to such personages an exception. The rule there is that no communication intended for the sovereign, even a letter accrediting a foreign minister, can be presented to the person to whom it is addressed, unless a copy shall previously be communicated to the proper minister of the sovereign. The reason for this rule is understood to be to prevent any letters of an improper character from being received by the sovereign."

Mr. Seward, Sec. of State, to Mr. Rice, July 16, 1861. MSS. Dom. Let.

No officer, civil, military, or naval, can properly carry on an official correspondence with a foreign Government, except through the Department of State, or its diplomatic representative at the seat of such Government.

Mr. Fish, Sec. of State, to Mr. Wines, Jan. 25, 1872. MSS. Dom. Let.

"In reply, I am directed by the Secretary of State to inform you that the usages of foreign intercourse require that communications from citizens or subjects of foreign Governments to the President should be addressed through the minister of the nation of which the writer is a subject or citizen. Moreover, it is not the province of the executive branch of this Government, as a general rule, to give attention to a claim or interest involving private rights only."

Mr. Hale, Asst. Sec. of State, to Mr. Kuhlmann, May 21, 1872. MSS. Dom. Let.

A foreigner abroad, desiring to communicate with this Government, must do so through the accredited representative of his Government at Washington.

Mr. Fish, Sec. of State, to Mr. Mantilla, Feb. 16, 1875. MSS. Notes, Spain.

"Where addresses were to be presented on behalf of the people, or a body of the people, of a foreign country, it was usual that an application should be made through the foreign minister accredited to the United States, and, in any event, that the minister should be consulted, and the contemplated proceeding prove acceptable to him."

Mr. Cadwalader, Acting Sec. of State, to Messrs. Parnell and Power, Oct. 19, 1876. MSS. Dom. Let.

On October 11, 1876, Mr. Parnell and Mr. O'Connor Power, members of the British Parliament, "sent their cards to the President, at his hotel, when on a visit to New York, and, being admitted, requested an opportunity to present an address on the occurrence of the Centennial with which they stated they were charged; and the President thereupon replied that he would shortly be in Washington when the matter might be disposed of. * * * They were informed (on October 17, 1876,) by a note that before they could be so received, it would be necessary that they should submit the address for approval to the Department of State. At this date the address appeared in the public prints.

"Upon the 18th of October, a communication was received at this

Department, signed by these gentlemen, asking an opportunity to present the address, and shortly after, and before the address had been examined, they called upon Mr. Cadwalader, then Acting Secretary of State in my absence, stating the object of their mission. Their attention was called to the fact that the Department of State could not properly act in such a matter unless the address had been submitted to the British minister. They stated their unwillingness to do so directly, but were understood to acquiesce entirely in the propriety of its being submitted by the Department to Her Majesty's representative.

"A copy of their note of October 17, with the address, was thereupon immediately sent to Sir Edward Thornton, for his perusal, who replied upon the same day that it would have afforded him pleasure to have asked permission to present these gentlemen to the President, had they applied to him for that purpose as was usual; but with regard to the address, that it contained such reflections on the conduct of Her Majesty's Government that he should not feel justified in taking part in its presentation without express instructions from his Government to do so.

"Mr. O'Connor Power and Mr. Parnell were thereupon informed by the Acting Secretary of State, by note dated the following day, of the substance of the reply of the British minister, and that it would not seem courteous to their own representative or their own Government to take any steps for a formal presentation of the address under such circumstances, but that arrangements would gladly be made for their personal presentation to the President if it were desired.

"Upon the 20th of October, these gentlemen again addressed the Department, renewing the request that the address be received, and suggesting that their representative did not appear to have any objection to the language of the address, and that it might still be presented, although he declined to take part therein; whereupon they were informed that as the British minister had based his refusal to take part in any presentation of the address upon the contents of the address itself, it was not possible to comply with their wishes.

"No further communication of any kind has taken place upon the question, and in making to you this statement, and in forwarding to you, as I do, at your request, a copy of all the correspondence herein referred to, including a copy of the proposed address, I have furnished you with all the information in my possession on the subject.

"The position which the Department was compelled to assume was that, while it was quite competent to present Mr. O'Connor Power and Mr. Parnell to the President individually, they being gentlemen of standing and position at home, and members of the Parliament of the United Kingdom, in order that an opportunity might be afforded them of expressing, as individuals, the good wishes of the persons at whose instance they were sent to the United States on the occasion of the Centennial, at the same time a proper respect for the Government of

Her Majesty, whose subjects they were, and for Her Majesty's representative in the United States, rendered it entirely incompetent to take any steps towards the presentation of an address to the President from the subjects of another and a friendly power, political in its character, and the contents of which were deemed by the representative of that power of such a nature as to compel him to refuse to take any part in its presentation.

"Your communication requests from me information as to the position occupied by this Department 'at this moment' on the subject. On this point I have the honor to say that I am not informed as to the precise matter before your committee at the present time, nor as to the similarity between the address which it is proposed now to present with that which the President was unable to receive.

"If, however, the address is in general form or substance the same, I may remind you that its reception was refused because Her Majesty's minister found it objectionable in tone towards his Government, and it is not likely to be less objectionable when presented in another quarter."

Mr. Fish, Sec. of State, to Mr. Swann, chairman of the Committee on Foreign Affairs, House of Representatives, Dec. 29, 1876. MSS. Report Book.

XVII. *DIPLOMATIC AGENTS PROTECTED FROM PROCESS.*

(1) WHO ARE SO PRIVILEGED.

§ 92.

A secretary of the legation is entitled to all the privileges of a minister.

Res. *v.* De Longchamps, 1 Dall., 111.

And so of an attaché.

U. S. *v.* Benner, Bald., 234.

A chargé d'affaires is privileged from arrest for debt while on his way to his own country, even though his diplomatic functions have terminated.

Dupont *v.* Pichon, 4 Dall., 321.

The laws of the United States which punish those who violate the privileges of a foreign minister are equally obligatory on the State courts as upon those of the United States, and it is equally the duty of each to quash the proceedings against any one having such privileges. In such cases the injured party may seek redress in either court against the aggressor, or he may prosecute in federal courts under federal statutes (1 Stat., 117; R. S., § 4064). And the circuit court cannot quash proceedings against a public minister pending in a State court;

nor can the court in any way interfere with the jurisdiction of the courts of a State.

Ex parte Cabrera, 1 Wash. C. C., 232.

The certificate of the Secretary of State is the best evidence to prove the diplomatic character of a person accredited as a minister by the Government of the United States. But parol evidence can be admitted to prove the period when a person was considered by the Government of the United States as a minister.

U. S. *v.* Liddle, 2 Wash. C. C., 205.

Proof that a person assaulted is received and recognized by the Executive of the United States is conclusive as to his public character, and that he is entitled to all the immunities of a foreign minister. But if a foreign minister commits the first assault he forfeits his immunity so far as to excuse the defendant for returning it.

U. S. *v.* Ortega, 4 Wash. C. C., 531.

Under the act of April 30, 1790, the arrest of the domestic servant of a foreign minister is illegal, the process invalid, and persons knowingly concerned in the arrest liable to prosecution. If, however, the domestic be an inhabitant of the United States, and shall have contracted debts prior to his entering into the service of the minister, which are still unpaid, he is not entitled to the benefit of the act concerning crimes that gives this immunity, nor shall any person be proceeded against for such arrest unless the name of the domestic be registered in the Secretary of State's office, and transmitted to the marshal of the district in which Congress shall reside.

1 Op., 26, Randolph, 1792.

The late governor of Guadaloupe, who had caused a vessel to be seized and condemned, is not exempt from suit and arrest in the courts of Pennsylvania whilst here as a prisoner to the British forces on parole; and if the circumstances attending the seizure were such as will constitute a defense, they must be pleaded.

If the seizure was an official act—done under color of the powers vested in him as governor—that will be an answer, as the extent of his authority could be determined only by the constituted authorities of his own nation; but it is not a case for the interposition of the Government.

1 Op., 45, Bradford, 1794.

A foreign naval officer is not privileged from arrest.

1 Op., 49, Bradford, 1794.

A slave or other person subject to the authority and control of another

is not privileged from being retaken by his or her superior, by engaging in the service of a foreign minister.

1 Op., 141, Lincoln, 1804.

A person accredited as a foreign minister to the United States, but not received as representing any recognized Government, and against whom a warrant is issued for unlawful recruiting, has no diplomatic privilege of right, and whatever privilege is accorded to him by courtesy should be withdrawn as soon as there shall be cause to believe that he is engaged in or contemplates any act inconsistent with the laws, the peace, or the public honor of the United States.

8 Op., 473, Cushing, 1855.

"The result of the President's reflections respecting the right you (Mr. Cabrera, who claimed exemption from criminal prosecution on ground of being connected with the Spanish legation) assert of being exempted from the ordinary jurisdiction of the country, is, that so far as the diplomatic quality, which is made the support of this privilege, has been conferred by the envoy of Spain, its attributes must be claimed only through him; but if you have been invested by His Catholic Majesty directly with a public character entitling you to exemption from the cognizance of our tribunals, all the means in the competency of the Executive will be used to assure to you the privilege on your forwarding to me the evidence of your appointment, authenticated by his said Majesty or his minister of foreign affairs."

Mr. Madison, Sec. of State, to Mr. Cabrera, Oct. 17, 1804. MSS. Dom. Let.

"Far would it be from the intention of the American Government to draw within its rigorous limits the exemption from ordinary legal process of a foreign public officer. It would extend to them a liberal measure of time, and a full portion of indulgence for the execution of the trust, and for departure after its completion. But it cannot perceive the justice of extending these privileges beyond their limits as sanctioned by custom for purposes of injustice and wrong."

Mr. Adams, Sec. of State, to Mr. d'Anduaga, Nov. 2, 1821. MSS. Notes, For. Leg.

If members of foreign legations are charged with criminal misconduct in the place of their residence, although they may not be open to criminal prosecution, the President will demand an explanation so that he can take proper action.

Mr. Clay, Sec. of State, to Mr. Tacon, Dec. 10, 1828. MSS. Notes, For. Leg. Same to same, Feb. 7, 1829.

"None but citizens of the United States with passports from this Department, and those who, being citizens, are certainly known to be entitled to and receive passports from officials abroad authorized by law to grant them, have properly any right to protection from our lega-

tions and consulates. This privilege, however, may, in special cases, and for a limited period, be extended to foreigners, and even to Turkish subjects who become official 'employés,' so long as they remain attached to the legation and consulates. The custom, it is understood, had its origin in the difficulty of finding American citizens skilled in the languages of the East, and the right should therefore be confined solely to employés indispensably necessary to our representatives. It is to be used with caution in all cases, and does not intend or tolerate the employment of persons in order to shelter them from justice, or such as may be justly obnoxious to the Government within whose jurisdiction the right is exercised."

Mr. Cass, Sec. of State, to Mr. Williams, Feb. 20, 1858. MSS. Inst., Turkey.

"The system of employing Turkish subjects (in our legation to Turkey) in subordinate capacities, although sometimes necessary, is an encroachment upon international law, as maintained between civilized states, and is unknown in our statutory legislation;" and the Government of the United States will not, except in strong cases, interfere for the protection of the persons so employed.

Mr. Seward, Sec. of State, to Mr. Morris, Dec. 23, 1867. MSS. Inst., Turkey.

"The publicists, whose writings are within reach of this Department, mention no such qualification of the right of employing a courier [viz., that the immunities of a courier from a legation do not attach to a person appointed in the country where the legation is situated]. That right is regarded by them as unlimited, or as only subject to the discretion of the legation in the choice of a person for the discharge of the trust. It is a general principle conferred by public law, which, in the interest of all nations, ought not to be restricted by municipal law, but, if necessary or advisable, should be confirmed and facilitated by the latter. It is true that in some countries municipal enactments are necessary to secure to the members of foreign legations those immunities under the law of nations to which they are entitled. This Government became sensible of this early in its career, for so long ago as the 30th of April, 1790, Congress declared void any process sued out of any court in the United States against any foreign minister or any domestic of his, and made this and the serving of such process a penal offense. Although bearers of dispatches are not expressly mentioned in the statute adverted to, as its object was to impart to every member of a foreign legation that immunity to which he may be entitled under the law of nations, no doubt is entertained that, if the statute were violated in respect to any bearer of dispatches duly appointed by the head of a foreign legation in this country, the violators would be punishable under that statute.

* * * "No appointment in a foreign country of a person as courier under arrest, or liable to arrest, would be approved by this Department,

especially if such appointment was in any way intended to screen the appointee from his liabilities under the municipal law."

Mr. Fish, Sec. of State, to Mr. Freyre, Dec. 17, 1870. MSS. Notes, Peru.
As to bearers of dispatches, see also § 97.

"The executive department of this Government can take no proceedings against persons who have the immunity attached to the diplomatic character except to ask their own Government to recall them from this country."

Mr. Fish, Sec. of State, to Mr. Darr, Feb. 2, 1871. MSS. Dom. Let.

"The Department has been fully informed of the origin and progress of the latter question by Mr. Heap, the experienced and intelligent consul of the United States at Tunis. The opinion which you express, that it is advisable for the United States to limit to as few as may be absolutely necessary the persons exempt from the local jurisdiction by being attached to the legation and consulates in Turkey and its dependencies, is entirely approved by the Department, and has for some time past been urged upon the officers of the United States in that quarter. It is understood that formerly there were great abuses in this respect. It was long before their extent could be ascertained, and it was found difficult to correct them from the eagerness with which persons sought the protection, so called, of the United States, and the reluctance of ministers and consuls to refuse it. No such immunity should be extended to any person not legally entitled to it, and then, as you remark, it should be maintained with firmness in behalf of those upon whom it may have been deliberately and considerately bestowed."

Mr. Fish, Sec. of State, to Mr. McVeagh, Apr. 18, 1871. MSS. Inst., Turkey.

The true test of privilege from suit of diplomatic representatives "is whether the exercise of the municipal authority in question is an unreasonable interference with the freedom with which the functions of the diplomatic representatives must be performed." The exemption "does not apply to the *contentious* jurisdiction which may be conferred on these (municipal) tribunals by the minister voluntarily making himself a party to a suit at law."

Mr. Fish, Sec. of State, to Mr. Jay, July 18, 1874. MSS. Inst., Austria. See also Mr. Fish to Mr. Jay, Sept. 9, 1874; Oct. 26, 1874. *Ibid.*
As to what is contained under the term "commencing a litigation," see Mr. Fish to Mr. Jay, Dec. 29, 1874; Mr. Fish to Mr. Jay, Jan. 13, 1875. *Ibid.*

"The tendency of opinion in regard to immunities of diplomatic agents is believed to be strongly toward restricting them to whatever may be indispensable to enable the agents to discharge their duties with convenience and safety. The extreme doctrine of immunity, which was the necessity of an age of barbarism and of the intercourse of uncivilized nations, has happily yielded to the progress of Christianity and of modern culture. * * * An envoy is not clothed with diplomatic immu-

ty to enable him to indulge with impunity in personal controversy, or escape liabilities to which he otherwise might be subjected. The sertion of these immunities should be reserved for more important and licate occasions, and should never be made use of when the facts of e particular case expose the envoy to the suspicion that private inter- t or a desire to escape personal or pecuniary liability is the motive hich induces it."

Mr. Fish, Sec. of State, to Mr. Jay, Nov. 29, 1874. MSS. Inst., Austria.

Moorish agents employed by United States citizens in the sea-ports Morocco to do business in the interior, may be, since necessary to such siness, placed under the protection of the United States, and granted fe conducts as such.

Mr. Evarts, Sec. of State, to Mr. Mathews, May 27, 1878. MSS. Inst., Barb. St.

As to whether a Spaniard, a messenger in the United States legation at Madrid, can be compelled to military service in Spain, see Mr. Evarts, Sec. of State, to Mr. Lowell, Feb. 25, 1879. MSS. Inst., Spain.

The wife of a secretary of a foreign legation in this country is, while th him in his official capacity, subject, in respect to her personal. tate, to the laws of the country he represents.

Mr. Frelinghuysen, Sec. of State, to Mr. Lawrence, Mar. 31, 1883, citing Wheat. Int. Law, 300–1 (Dana's ed.); 4 Phill. Int. Law, 122–3. MSS. Dom. Let.

"Foreigners in the employ of the United States consulates and their gencies in Turkey have a right to the protection of the United States all matters pertaining to their office and personal safety, but not in gard to their commercial affairs and private business, for protection which they must look to the representatives of the nation of which ey are citizens."

Mr. Bayard, Sec. of State, to Mr. Cox, Nov. 6, 1885. MSS. Inst., Turkey.

"In a recent case (Taylor *v.* Best) the true position and liability of a cretary of legation accredited to the court of England by a foreign reign, and acting in the absence of his ambassador as chargé d'af- es, were most elaborately discussed; and it was held, first, that such official was entitled to all the privileges of an ambassador; second, he did not forfeit his privilege by engaging in mercantile pursuits e, and third, that if a foreign minister voluntarily attorns to the isdiction of the courts of this country he is estopped from applying the courts to stay proceedings on the ground of his privilege; but it ms to have been doubted, in the course of the arguments, whether privileges of an ambassador or foreign minister extend to prevent being sued in the courts of this country, or only to protect him from cess which may affect the sanctity of his person or his comfort or nity. In the course of the case the question as to the liability of a mestic servant of an ambassador, when engaging in mercantile trans- tions, being raised, it was held that the same privilege does not extend them as to the ambassador, for, as Mr. J. Maule said, 'the privilege not that of the servant, but of the ambassador; it is based on the as-

sumption that by the arrest of any of his household retinue his personal comfort and state may be affected.'"

Abdy's Kent (2 ed.), 121.

"A diplomatic representative possesses immunity from the criminal and civil jurisdiction of the country of his sojourn; and cannot be sued, arrested, or punished by the law of that country. Neither can he waive his privilege, for it belongs to his office, not to himself. It is not to be supposed that any representative of his country would intentionally avail himself of this right to evade just obligations incurred either by himself or the members of his mission.

"A secretary of legation is, according to the admitted principles of international law, a 'public minister.' His personal privileges, immunities, domiciliary privileges, and exemptions are generally those of the minister of whose official household he forms a part.

"The personal immunity of a diplomatic agent extends to his household, and especially to his secretaries. Generally, his servants share therein, but this does not always apply when they are citizens or subjects of the country of his sojourn. Cases have arisen where a diplomatic agent has claimed for a native servant exemption from military service. His right to do so is not clear, and in future the diplomatic agents of the United States are advised against questioning the right of the native Government to claim such service from one of its subjects in his employ. It is to be expected that the claim, if made, will be presented courteously to the chief of the mission.

"It is customary for a foreign minister to furnish to the local government a list of the members of his household, including his hired servants, with a statement of the age and nationality of each. When this is requested it should always be given. (See as to asylum, *infra*, § 104.)

"In most Mohammedan and Oriental countries, the rights and immunities of extraterritoriality have been secured by treaty to foreign representatives, including to some extent consular officers.

"Among the rights of extraterritoriality is that of criminal and civil jurisdiction, which will be specially treated under its appropriate heading."

Printed Pers. Inst. Dip. Agents, 1885.

(2) ILLEGALITY OF PROCESS AGAINST.

§ 93.

The entering a public minister's house to serve an execution will either be absorbed in the arrest, as being necessarily associated with it, if that be found criminal, or, if the arrest be admissible, must be punished, if at all, under the law of nations.

1 Op., 26, Randolph, 1792.

The President will not interfere with judicial proceedings between an individual and the commissioner of a foreign nation where the controversy may have a legal trial, unless the suit grew out of acts done by the commissioner in pursuance of his commission.

1 Op., 81, Lee, 1797.

If a minister violate the laws of the Government to which he is accredited, or otherwise offend its sovereignty, there is no remedy except in the manner and form prescribed by international law.

7 Op., 367, Cushing, 1855.

Any person who executes process on a foreign minister is to be deemed an officer under section 26 of the act of 1790 (1 Stat., 117; R. S., § 4064), and in such case *scienter* need not be proved, nor is submission of the minister any defense.

U. S. *v.* Benner, Baldwin, 234.

"The statutes of the United States provide severe punishments for all such violation of the diplomatic immunities of the representatives of foreign states, and the courts of the United States, acting in harmony with the principles of public law, as recognized by the Government, have in more than one instance held that the law does not make knowledge an ingredient in an offense against the diplomatic immunities of a minister, and that it is not necessary to support an indictment against a person who executes a process against such minister, that the defendant should know the person arrested to be a foreign minister."

Mr. Fish, Sec. of State, to Mr. de Vaugelas, Dec. 28, 1876. MSS. Notes., France.

Ignorance of the diplomatic immunities of a party arrested does not protect parties who illegally made such arrest.

Mr. Fish, Sec. of State, to Mr. Washburne, Jan. 11, 1877. MSS. Inst., France.
U. S. *v.* Benner, *supra*.
As to privileges of French consuls under treaty, see *ibid.*

The service of legal process upon a foreign minister is an infringement of his privilege and an abuse of the process of the court.

Mr. Blaine, Sec. of State, to Governor of Rhode Island, Oct. 31, 1881. MSS. Dom. Let.

Service of writs on foreign ministers is in contravention of section 4064 Revised Statutes, and may be a matter for prosecution in federal courts.

Mr. Frelinghuysen, Sec. of State, to Mr. Brewster, June 28, 1883. MSS. Dom. Let. (See 9 Op., Atty. Gen., 7.) Same to same, June 21, 1883.

Revised Statutes, sections 4063 and 4064, do not impose a penalty on judges hearing suits in which foreign ministers are defendants, but simply on parties suing out or enforcing writs of execution against such ministers.

Mr. Frelinghuysen, Sec. of State, to Mr. Preston, July 10, 1883. MSS. Notes, Hayti.
As to immunity of foreign ministers from process for debt, see Mr. F. W. Seward, Asst. Sec. of State, to Mr. Devens, Aug. 22, 1878. MSS. Dom. Let.

General Henderson, Minister from Texas to France (before the annexation of Texas), was arrested in New York, on his return from France to Texas, on an alleged debt. The court discharged him from arrest, and held that the want in his case of a passport made no difference in the case.

Holbrook *v.* Henderson, 4 Sandf., 619.

(3) EXEMPTION FROM CRIMINAL PROSECUTION.

§ 93*a*.

The prevalent view, so far as concerns civil process, is that the doctrine of extraterritoriality does not apply (1) in cases where, from the nature of the case, no other jurisdiction exists than that in which the embassy holds its seat, *e. g.*, suits for real estate; (2) in cases where the ambassador sues, and the claim against him is set up by way of set-off; (3) in cases in which the ambassador voluntarily submits to a hearing before arbitrators, in the same sense in which a sovereign may agree to an arbitration; (4) in cases where the ambassador, with the consent of his Government, submits himself to the jurisdiction; (5) in cases where the ambassador is a citizen or subject of the state to which he is accredited, or when he is at the time in the service of such state; (6) in cases where the ambassador engages in trade, and the suit is brought in respect to such trading engagements. This extraterritoriality ordinarily protects the diplomatic agent also from prosecutions for crime; unless the crime be of a character so outrageous and conspicuous as to forfeit his privileges, or disturb the peace of the country of his residence. But even in this case, the better course is to send him home to his own sovereign, who alone has jurisdiction over him. The privilege of extraterritoriality no longer gives the ambassador, as was once supposed to be the case, the power to execute penal discipline upon his subordinates.

Whart. Com. Am. Law., § 167.

If a minister's crimes be such as to render him amenable to local jurisdiction, it must be because they forfeit the privileges annexed to his character; and the minister, by violating the conditions under which he was received as the representative of a foreign sovereign, has surrendered the immunities granted on those conditions; or, according to the true meaning of the original assent, has ceased to be entitled to them.

Exchange *v.* McFaddon, 7 Cranch, 116.

"Ministers of the highest grade, in cases of great enormity, are subject to the penalty of the law, according to the law of nations."

Mr. Monroe, Sec. of State, to Mr. Harris, Dec. 10, 1815.

Early in 1816, Kosloff, the Russian consul at Philadelphia, was arrested in Philadelphia on the charge of having ravished a girl of twelve years, who was a servant in his family. He was taken before a justice of the peace in Philadelphia (who by law was not empowered to take bail in cases of that class), who (a *prima facie* case being shown) committed Kosloff to prison to wait trial. A writ of *habeas corpus* being taken out

next day before the chief justice of Pennsylvania, Kosloff was bound over (bail being taken) to answer to the next court. At this court an indictment for rape was found against him by the grand jury. The district attorney of the United States for Philadelphia was instructed by the President to give his assistance as counsel to Mr. Kosloff, which was done, though the defense was managed by other counsel. A motion was then made by the defense to dismiss the indictment on the ground that the case was exclusively cognizable by Federal courts. This motion was granted for the reason given. (Com. *v.* Kosloff, 5 S. and R., 545.) Rape not being then an offense by a statute of the United States, the Attorney-General of the United States gave an opinion that the Federal courts had not cognizance of the offense. The Russian minister at Washington urged with great earnestness a trial on the merits. This, however, was impracticable under the circumstances. The Russian Government took umbrage at what it considered a failure of justice, and refused to receive Mr. Harris, United States chargé, until a due explanation was made. The above explanation was made in reply by Mr. Monroe, Secretary of State, in a letter to Mr. Harris, July 31, 1816, quoted *infra*.

See further, same to same, Sept. 30, 1816; Mr. Monroe to Mr. J. Q. Adams, Nov. 2, 1816. MSS. Inst., Ministers.

Mr. Daschkoff subsequently informed the Government that he had "terminated his mission to the United States by the order of his sovereign," on this account, which was regarded as the more remarkable from the fact that "the Government of Russia had admitted that a consul deserves no protection in such a case from the law of nations."

Mr. Monroe, Sec. of State, to Mr. Hughes, Nov. 2, 1816; to Mr. Pinkney, Nov. 16, 1816. MSS. Inst., Ministers. See further Mr. Monroe to Mr. Daschkoff, Aug. 16, 1816, Sept. 12, 1816; to Count de Nesselrode, Oct. 23, 1816. MSS. Notes, For. Leg.

"How far ambassadors and public ministers themselves are exempted by the law of nations from punishment for crimes of this nature by the laws of the country in which they reside may perhaps with some be doubtful; but this is foreign to the present purpose. Consuls, it is believed, are not exempt from such punishment. This opinion is supposed to be warranted by the weight of authority in those commentators on public law whose opinions are alike respected in Europe and the United States, and by the general admission and practice of European nations. Consuls are undoubtedly entitled to great respect, as bearing the commissions of their sovereign, but their duties are of a commercial nature, and their public character subaltern; neither their persons nor their domiciles have heretofore been protected, as have those of ambassadors and other public ministers.

"Instances are not wanting in which some of them have been brought within the jurisdiction of our courts. It is not known that it has ever yet laid the foundation of any charge of a breach of privilege or infringement of public law on the part of any of the Governments of Europe, whose commissions these consuls may respectively have borne. For a recapitulation of some of these instances, I beg leave to refer you to

the report made to me by the attorney of the United States at Philadelphia. I also beg leave to refer you, with the like view, as well as for an elucidation of other topics connected with this dispatch, to the opinion at large of that very respectable magistrate, the chief justice of Pennsylvania, contained in the folio document, and numbered 20. One of the instances set forth in the attorney's report, and known to this Department to be authentic, deserves to be particularly adverted to. It was the case, not of a consul, but of a commissioner of His Britannic Majesty, under the sixth article of the treaty of amity, commerce, and navigation between the United States and Great Britain, made at London in the year 1794.

"A British subject, clothed with a commission from his King, under this article (whereby, as it is conceived, he stood upon a footing certainly not inferior in dignity to a consul), was subjected to a process issuing from a court in Philadelphia, and took his trial before a jury on the charge brought against him. The Government of England did not complain of the proceeding."

Mr. Monroe, Sec. of State, to Mr. Harris, July 31, 1816. MSS. Inst., Ministers.

If the crime committed affect individuals only, the Government of the country is to demand his recall; and if his Government refuse to recall him, he may be expelled by force or brought to trial, as no longer entitled to the immunities of a minister. If the crime affects the public safety of the country, its Government may, for urgent cause, either seize and hold his person till the danger be passed, or expel him from the country by force; for the safety of the state, which is superior to other considerations, is not to be periled by overstrained regard for the privileges of an ambassador.

7 Op., 367, Cushing, 1855.

If the offense be grave, but not such as to compromise the public safety, the course is to demand the recall of the minister, and meanwhile to refuse or not all further intercourse with him, according to the circumstances. For implication in attempts to enlist troops in the United States, it was held that the President might send his passports to the British minister, with intimation to leave the country without delay; or, in his discretion, adopt the milder course, as President Washington did in the case of M. Genet, of affording the minister opportunity for explanation through the Secretary of State; and then, if his explanation should be unsatisfactory, to demand his recall.

Ibid.

See further as to dismissal in latter case, *supra*, § 84, *infra*, § 395.

(4) WHAT ATTACK ON A MINISTER IS AN INTERNATIONAL OFFENSE.

§ 93b.

A riot before the house of a foreign consul by a tumultuous assembly, requiring him to give up certain persons supposed to be resident with

him, and insulting him with improper language, is not an offense within the act of the 30th of April, 1790, which prescribes the punishment "for any infraction of the law of nations, by offering violence to the person of an ambassador *or other public minister.*"

1 Op., 41, Bradford, 1794.

The immunities of the domicil do not extend to an annexed garden.

1 Op., 141, Lincoln, 1804.

An indictment charging one with offering violence to the person of a public minister, contrary to the law of nations and the act of Congress in such case provided, is not a case "affecting ambassadors, other public ministers, and consuls," within section 2, Article III, of the Constitution.

U. S. *v.* Ortega, 11 Wheat., 467.

The clause in the Constitution (second section, third article) that the judicial power of the United States extends to all cases affecting ambassadors, other public ministers, and consuls, confers a public, not a personal, privilege, and is not waived by an omission to plead it in a State court of the first instance.

Davis *v.* Packard, 7 Pet., 276.

The immunity of diplomatic representatives abroad is sanctioned by public law.

Mr. Fish, Sec. of State, to Mr. Partridge, Dec. 31, 1869. MSS. Inst., Venez.

XVIII. *AND FROM PERSONAL INDIGNITY.*

§ 94.

By the municipal law, as well as the law of nations, a foreign minister is peculiarly protected not only from violence, but also from insult, such as a libel.

1 Op., 52, Bradford, 1794. See 7 John Adams's Works, 421, 495; 10 *ibid.*, 33.

An ambassador or other representative of one foreign nation residing in another is entitled to be treated with respect so long as he is permitted to continue in the country to which he is sent, and especially ought not to be libeled by any of the citizens. If he commits any offense, it belongs, in our country, to the President to take notice of it, and not to any individual citizen. The President may dismiss him or desire his recall, or complain to his sovereign and require satisfaction.

1 Op., 71, Lee, 1797.

An affront to an ambassador is just cause for national displeasure, and, if offered by an individual citizen, satisfaction is demandable of his nation. It is not usual for nations to take serious notice of publications in one nation containing injurious and defamatory observa-

tions upon the other, but it is usual to complain of insults to their embassadors, and to require the parties to be brought to punishment.

Ibid.

The entry into a minister's garden by the agent of the owner of a slave, and there seizing and carrying away to the owner such slave, is not such a violation of the domicile of the minister as constitutes a punishable offense under the crimes act of 1790 (1 Stat., 118; R. S., § 4064).

1 Op., 141, Lincoln, 1804.

For injuries done by private persons to foreign ministers, redress is to be had through the regular judicial tribunals.

9 Op., 7, Black, 1857.

An indictment under the act of 1790 (1 Stat., 118; R. S., § 4062) for offering violence to the person of a public minister is not a case "affecting ambassadors or other public ministers and consuls," within the second section of the third article of the Constitution."

U. S. *v.* Ortega, 11 Wheat., 467. See in this case note by Mr. Wheaton on the general question of jurisdiction over foreign ministers.

The tearing down, in a riot in the city of Philadelphia, in 1802, of the flag of the Spanish minister, "with the most aggravating insults," was held to be cognizable in the State court of Pennsylvania.

Mr. Madison, Sec. of State, to Governor McKean, May 11, 1802. MSS. Dom. Let.

For an account of the trial of Wm. Cobbett for libel on the Spanish minister Yrujo, see 3 Life of Pickering, 396 *ff*; Wharton's St. Tr., 322.

As to other proceedings of Yrujo, see *infra*, § 106. *Supra*, § 84.

The indignities alleged to have been offered in 1809, to Mr. Jackson, British minister at Washington, are discussed in detail in another section, (*infra*, § 107,) and it is shown that the pretence of such indignities, set up by that officer, is not sustained in point of fact. The circumstances of Mr. Jackson's dismissal are noticed. (*Supra*, § 84.)

"During Mr. Gallatin's mission at London, in 1827, an incident occurred involving a question of diplomatic privileges, which led to an exposition of the British views on the rights of embassy. His coachman was arrested in his stable on a charge of assault, by a warrant from a magistrate. The subject having been informally brought to the notice of the foreign office, a communication was addressed to the secretary of the American legation by the under secretary of state, Mr. Backhouse, May 18, 1827, in which he informed Mr. Lawrence of the result of a reference made by order of Lord Dudley, to the law officers of the Crown. In it it is said that 'the statute of the 7th Anne, chap. 16, has been considered in all but the penal parts of it nothing more than a declaration of the law of nations; and it is held that neither that law, nor any construction that can properly be put upon the statute, extends to protect the mere servants of ambassadors from arrest upon criminal charges, although the ambassador himself, and probably those who may be named in his mission are, by the best opinions, though not by the uniform practice of this country, exempt from every sort of prosecution, criminal and civil. His lordship will take care that the mag-

strates are apprised, through the proper channel, of the disapprobation of His Majesty's Government of the mode in which the warrant was executed in the present instance, and are further informed of the expectation of His Majesty's Government that, whenever the servant of a foreign minister is charged with a misdemeanor, the magistrate shall take proper measures for apprising the minister, either by personal communication with him or through the foreign office, of the fact of a warrant being issued, before any attempt is made to execute it, in order that the minister's convenience may be consulted as to the time and manner in which such warrant shall be put in execution.'

"An official character was given to the preceding communication by a note from Earl Dudley, secretary of state for foreign affairs, June 2, 1827, in which he says that it is only necessary for him to 'confirm the statement contained in the private note of Mr. Backhouse, referred to by Mr. Gallatin, as to the law and practice of this country upon the questions of privilege arising out of the arrest of Mr. Gallatin's coachman, and to supply an omission in that statement, with respect to the question of the supposed inviolability of the premises occupied by a foreign minister. He is not aware of any instance, since the abolition of sanctuary in England, where it has been held that the premises occupied by an ambassador are entitled to such a privilege by the law of nations.'

"He adds that courtesy requires that their houses should not be entered without permission being first solicited in cases where no urgent necessity presses for the immediate capture of an offender."

Lawrence's Wheaton (ed. 1863), 1006, 1007.

"In the case of all offenses against the law, committed in this country, no arrest can be made, nor can any judicial proceedings be instituted, except upon complaint sustained by the oath of a credible witness. The mere allegations in notes of a diplomatic representative, although they may command the entire confidence of the executive branch of the Government, are not such proof as the law requires or as the judicial tribunals of the country can recognize."

Mr. Fish, Sec. of State, to Mr. Mantilla, Sept. 27, 1875. MSS. Notes, Spain.

As to maltreatment of Mr. Washburn, minister to Paraguay, see report of Secretary of the Navy, Feb. 11, 1869, House Ex. Doc. No. 79, 40th Cong., 3d sess. See also House Ex. Doc. No. 5, 41st Cong., 1st sess.; Mis. Doc. 8, pt. 2, same sess. (Memorial of Bliss and Masterman), and report thereon, House Rep. No. 65, 41st Cong., 2d sess.

That the Federal courts have no common-law jurisdiction of libels on foreign ministers, but that such libels may be prosecuted in State courts, see *supra*, § 56.

XIX. *AND FROM TAXES AND IMPOSTS.*

§ 95.

"All applications to this Department for free entry of articles imported for the use of ministers and chargés d'affaires, and which they desire shall be delivered free of duty, must be made through the Department of State, accompanied by a bill of lading and by a statement of the number of packages, and their marks and numbers, with a general

description of their contents, naming the vessel or other vehicle in which the same were imported, and the person to whom they wish the delivery to be made. When the request of the minister or chargé, with the bill of lading and statement aforesaid shall have been communicated to this Department by the Secretary of State, instructions will be given to the collector of the customs to deliver, free of duty, such packages as may be found to correspond with the bill of lading and statement aforesaid."

Treasury Regulations of 1857, Art. 247, quoted in Mr. Trescot, Acting Sec. of State, to Mr. van Limburg, June 29, 1860. MSS. Notes, Netherlands.

That the practice has been to permit ministers of the United States when returning to the United States from abroad to bring in baggage and personal furniture duty free, see Mr. Gallatin to Mr. Clay, Nov. 23, 1815.

The right of exemption from custom-house duties of articles required for personal use is restricted to the person who is the head of a foreign mission.

Mr. Fish, Sec. of State, to Mr. Yano, Jan. 9, 1874. MSS. Notes, Japan.

Residences of foreign ministers in Berlin not being taxed, there should be a similar exemption of taxation of residences of German ministers at Washington, though the better opinion is that such exemption is limited to heads of missions.

Mr. Fish, Sec. of State, to Mr. Stumm, May 28, 1873. MSS. Notes, Prussia.

"The general usage of nations is to accord the franchise of immunity from customs duties to all heads of missions, temporary or permanent, of whatever rank, and that while in some countries, Spain, for instance, the extent of the privilege is limited (although even there very generously bestowed), it (the Department) can find no case of its denial to any chief diplomatic officer save in Russia."

Mr. F. W. Seward, Acting Sec. of State, to Mr. Hoffman, Aug. 21, 1879. MSS. Inst., Russia.

"There is no law on the statute-book prescribing or regulating the free entry of articles imported by foreign diplomatic officers. That is entirely a subject within the discretion of the Secretary of the Treasury, and rests merely on the ascertained fact of reciprocity."

Mr. Brown, Chief Clerk, to Mr. Willamov, June 9, 1880. MSS. Notes, Russia.

"In reply to your letter of the 23d ultimo, I have to say that the rule observed by this Government with respect to the taxation of property owned by a foreign Government and occupied as its legation, is to accord reciprocity in regard to general taxation but not to specially exempt it from local assessments, such as water rent and the like, unless it were definitely understood that these taxes would also be exempted by the foreign Government upon a piece of property belonging to the United States and used for a like purpose by our minister. Our diplomatic representatives either personally contract for the premises occupied by them and are granted a maximum allowance for rent for that portion

of the premises actually set apart for legation purposes, or else they rent a piece of property to be used exclusively for official business, charging therefor in their contingent quarterly accounts as allowed by the Department.

"When a foreign legation occupies rented property in this country, the owner of the premises is not exempted from all lawful taxes.

"It is of course impracticable to do more than state the general and equitable usage prevailing in such matters. The Government of the United States is not the owner of real estate abroad except at Tangier, Africa, which is a specially donated property, and the only differences to be noted in the way of leasing or renting property from the general rule stated above are to be found in China and Japan. In those countries contracts for legation premises are authorized by act of Congress."

Mr. Bayard, Sec. of State, to Mr. Woolsey, Apr. 15, 1886. MSS. Dom. Let.

"A diplomatic representative possesses immunity from the criminal and civil jurisdiction of the country of his sojourn, and cannot be sued, arrested, or punished by the law of that country. Neither can he waive his privilege, for it belongs to his office, not to himself. It is not to be supposed that any representative of his country would intentionally avail himself of this right to evade just obligations, incurred either by himself or the members of his mission.

"*If, however, a diplomatic agent holds, in such foreign country, real or personal property, aside from that which pertains to him as a minister, it is subject to the local laws.*

"It is the custom of international intercourse that to a diplomatic agent shall be conceded the privilege of importation of effects for his personal or official use, or for the use of his immediate family, without payment of duties thereon. The application of this privilege varies in different countries, but as a rule is restricted to the head of the mission. It is the duty of the agent to acquaint himself with the formalities prescribed in such case by the local law or regulations, and to conform therewith. The privilege is one of usage and tradition, rather than an inherent right, and is one which the Government of the United States gives to the foreign representatives it receives. Where the agent has ground to believe that a full measure of reciprocal courtesy is limited or denied to him abroad, he should refrain from questioning the local rule on the subject, but await such instructions as the Department of State may give him after receiving full information as to the circumstances.

"The diplomatic privilege of importing goods for personal use is not accorded to a foreign secretary of legation in the United States or in any foreign country, so far as is known.

"In most countries the franchise of importation is accorded to a chargé d'affaires *ad interim*. Where the exception exists the fact should not be made the occasion of remonstrance or argument with the local Government without the express directions of the Department of State.

"Transit free of customs dues is usually conceded by a third state through whose territories a diplomatic officer passes on his way to or from his post."

Printed Pèrs. Inst., Dip. Agents, 1885.

As to status in third country see *infra*, §97.

XX. *PROPERTY PROTECTED.*

§ 96.

A chargé d'affaires of Russia had a large party at his house, and a transparent painting at his window, at which a mob which had collected took offense; the defendant fired two pistols at the window, his intention being to destroy the painting without doing injury to the person of the minister or of any one. The defendant was indicted for an assault upon the chargé d'affaires and for infracting the laws of nations by offering violence to the person of the said minister. It was held that the law of nations identifies the property of a foreign minister, attached to his person or in his use, with his person. To insult them is an attack on the minister and his sovereign, and it appears to have been the intention of the act of Congress to punish offenses of this kind. But it was said that to constitute such an offense against a foreign minister the defendant must have known that the house on which the attack was made was the domicile of a minister; otherwise it is only an offense against the municipal laws of the state.

U. S. v. Hand, 2 Wash. C. C., 435.

The persons and personal effects of foreign ministers, of their families and attachés, are exempt from seizure, arrest, or molestation, both by the law of nations and by act of Congress. A hotel-keeper, therefore, cannot prevent an attaché from removing his personal effects from the premises; and any attempt to do so would be punished by the courts.

5 Op., 69, Toucey, 1849.

It is not within the constitutional power of the President of the United States to deliver over to the minister of the Netherlands certain jewels, detained in the custom-house of New York, which are shown to have been stolen from the Princess of Orange, on whose behalf the minister of the Netherlands makes claim.

Mr. Livingston, Sec. of State, to Mr. Huygens, Aug. 5, 1831. MSS. Notes, For. Leg. See further, same to same, Sept. 6, 1831.

If, however, the question comes up in the way of libel or other procedure in the Federal courts, the President will direct such action as will best conduce to the delivery of the jewels to their rightful owners.

Same to same, Jan. 13, 1832; *ibid.*

A municipal law, giving a landlord a "real right" (*droit reél*) over personal property belonging to the diplomatic agent of a foreign sovereign, entitling the creditor to seize such goods of such diplomatic agent in his own house, does not abrogate the law of nations so far as it gives inviolability to such house.

Mr. Legaré, Sec. of State, to Mr. Wheaton, June 9, 1843. MSS. Inst., Prussia.

"Immunity from local jurisdiction extends to the diplomatic agent's dwelling-house and goods, and the archives of the legation. These cannot be entered and searched, or detained under process of local law, or by the local authorities."

Printed Pers. Inst., Dip. Agents, 1885.

XXI. *FREE TRANSIT AND COMMUNICATION WITH, SECURED.*

§ 97.

A diplomatic agent, traveling on his way to the country to which he is accredited, through a third country, pursuing for this purpose a natural and proper route, is entitled to the same privilege as when traveling through the country to which he is accredited. It may be that such country is in a state of war with the third power. This does not destroy his right of transit; but if a convenient route is pointed out to him which will not embarrass an occupying army, he must take this route, and cannot be permitted to insist on carving out a route of his own.

Whart. Com. Am. Law, § 168.

The line of transit may be prescribed by the nation through whose territory the minister may pass at its option.

Field's Code Int. Law, § 136. See 2 Phil. Int. Law, 186–189.

"I heartily reprobate the outrage on the British Government in violating (by a privateer) the seals of its accredited minister to the United States, and am desirous of taking such notice of it as the respect we owe, not only to the Government of Great Britain but to ourselves, demand; I pray you, therefore, to refer the business to the attorney of the District, in the absence of the Attorney-General, with instructions to prosecute the persons he may find guilty of any breach of the law of nations or the land."

Mr. J. Adams, President, to Mr. Pickering, Sec. of State, July 20, 1799; 8 John Adams' Works, 668. See *ibid*, 658.

A belligerent has no right to stop the passage of a minister from a neutral state to the other belligerent, unless the mission of such minister be one hostile to the first belligerent.

Mr. J. Q. Adams, Sec. of State, to Mr. Brown, Dec. 23, 1823. MSS. Inst., Ministers.

"Some looseness of practice has crept in, with reference to passports of this kind (to bearers of dispatches), of an injurious tendency. Originally given to those actually charged with dispatches, they have been retained for ordinary use after the dispatches have been delivered at their destination. This circumstance has sometimes given an unreal character to these passports, which tends to impair their value in the hands of those entitled to them, besides being objectionable in other respects."

Mr. Everett, Sec. of State, to Mr. Mann, Dec. 13, 1852. MSS. Dom. Let.

"With reference to the permission given to the foreign representatives to correspond with their consuls in the ports of the insurgent states by means of vessels-of-war entering their ports, I have to remark that circumstances have come to the knowledge of this Department which render it advisable that this permission shall hereafter be restricted to the correspondence of the consuls of those powers only who, by the regulations of their respective Governments, are not allowed to engage in commerce. I will consequently thank you to request the commander of any British vessel, who may visit the ports adverted to, to abstain from carrying letters for consuls who may be engaged in trade."

Mr. F. W. Seward, Acting Sec. of State, to Lord Lyons, Feb. 6, 1862. MSS. Notes, Gr. Brit.; Dip. Corr., 1862.

The French Government, while conceding, in 1854, to Mr. Soulé, United States minister to Spain, the right to pursue the direct route through France to Spain, declined to permit him, in consequence of his political antecedents, to make, on his way, a stay, "séjour," in Paris.

Calvo droit int., 3d ed., vol. 1, 603.

In Senate Executive Document No. 1, Thirty-third Congress, second session, is printed the correspondence between the United States minister at Paris, Mr. Mason, and Mr. Drouyn de L'Huys, the French minister of foreign affairs, relative to the refusal of the French Government to allow Mr. Soulé, the United States minister to Spain, to enter France. The circumstances are thus stated by Mr. Lawrence:

"A question arose in 1854 between the United States and France as to the immunities of a minister passing through the territories of a third power, in the case of Mr. Soulé, minister at Madrid, who was stopped at Calais in October of that year on his return to his post from which he had been temporarily absent. The views of the French Government are given in a note from the minister of foreign affairs to the American minister in Paris with regard to the privilege of transit, which was not denied, as well as respecting the position in relation to that country which the envoy to Spain held, he being a native-born subject of France, and a naturalized citizen of the United States. While Mr. Soulé's quality of foreigner, deduced from his expatriation, is recognized as to all other matters, and no exception taken to his title to the Spanish mission, Mr. Drouyn de L'Huys refers to the rule of the law of nations which, he assumes, would have required a special agreement to have enabled him to represent, in his native land, the country of his adoption. 'You see, sir,' says he, 'that the Government of the Emperor has not wished, as you appear to think, to prevent an envoy of the United States crossing the French territory to go to his post to acquit himself of the commission with which he was charged by his Government; but between this simple passage and the sojourn of a foreigner whose antecedents have awakened, I regret to say, the attention of the authorities invested with the duty of securing the public order of the country, there exists a difference, which the minister of the interior had to appreciate. If Mr. Soulé was going immediately and direct to Madrid, the route of France was open to him; if he was about coming to Paris to sojourn there, that privilege was not accorded to him. It was, there-

re, necessary to consult him as to his intentions, and it was he who d not give the time for doing this.

"'Our laws are precise on the subject of foreigners. The minister of e interior causes the rigorous dispositions of them to be executed hen the necessity for it is demonstrated to him, and he then uses a scretionary power which the Government of the Emperor has never lowed to be discussed. The quality of foreigners placed Mr. Soulé ıder the operation of the measure which has been applied to him. ɔu will admit, sir, that in doing what we have done the Government the United States, with which His Imperial Majesty's Government artily desire to maintain relations of friendship and esteem, has in no- se been attacked in the person of one of its representatives. The nister of the United States is free, I repeat, to cross France. Mr. ulé, who has no mission to fulfill near the Emperor, and who, con- mably to a doctrine consecrated by the law of nations, would have ed, in consequence of his origin, of a special agreement to rep- ɜent, in the country of his birth, the country of his adoption. Mr. ulé, a private individual, comes within the operation of the law com- ɔn to all persons, which has been applied to him, and cannot pretend any privilege.' Mr. Drouyn de L'Huys to Mr. Mason, Nov. 1, 1854, nate Doc. No. 1, 33d Cong., 2d sess."

Lawrence's Wheaton (ed. 1863), 422.

A person coming into the United States as the diplomatic representa- ve of a foreign state, with credentials from governing powers not rec- nized by this Government, is accorded diplomatic privileges merely transit, and this of courtesy, not of right, and such privileges may be ithdrawn whenever there shall be cause to believe that he is engaged , or contemplates, any act not consonant with the laws, peace, and ıblic honor of the United States.

8 Op., 471, Cushing, 1855.

Such a person, being charged with unlawful recruiting, was saved ɔm prosecution on condition of not becoming chargeable with any rther offense and of departing from the country within a reasonable ne.

8 Op., 473, Cushing, 1855.

"The right to send dispatches of a minister secured by the law of tions certainly involves the right to designate the messenger and the violability of his person when executing the commission. But when ɔountry is in a revolutionary state this absolute right ought to be exer- ɜed with due regard to the safety of the state where the minister sides, and temporary inconveniences which do not go to the defeat of e right itself may well be submitted to in such a time without a com- omise of the dignity or honor of a just and friendly nation."

Mr. Seward, Sec. of State, to Mr. Burton, May 29, 1861. MSS. Inst., Colombia. That consuls are not entitled to use their official agencies for correspondence for the carrying of communications to an enemy of the place of their residence, see Mr. Seward, Sec. of State, to Mr. Adams, Oct. 22, 1861, *infra*, § 119.

A bag purporting to contain dispatches of a foreign Government, and sealed and authenticated by a consul of such Government, is regarded as invested with the seal of such Government, and is not open to examination by the authorities of the country to which the consul is accredited.

Mr. Seward, Sec. of State, to Lord Lyons, Apr. 5, 1862. MSS. Notes, Gr. Brit.

"On general principles, however, a Government may be said to have a clear right to send its communications to its diplomatic agents in foreign countries, and its legation in one country to those in another by means of couriers, which communications should be inviolable by the authorities of the country through which they may pass. If the courier should be, as he ought to be, provided with a passport attesting his official character, and the dispatches of which he is the bearer are in his luggage, his affirmation to that effect ought, it seems to me, to exempt the latter from search, unless its bulk or other circumstances afford reasonable ground for suspicion that the courier has abused his official position for the purpose of smuggling.

"Formerly it was the practice of this Department, and of the legations of the United States abroad, to issue courier passports for the mere convenience of individuals, when either there were really no dispatches to send, or, if there were, they might as well have gone by post. The abuse to which this practice led, and the consequent disrepute into which it brought the Government in Europe, compelled its discontinuance many years since. The authorities of that quarter may probably be induced to withhold perhaps the customary courtesies from couriers of the United States from a recollection of their former excessive numbers. If, however, it should be understood that persons are not now employed in that capacity except upon occasions similar to those when they are employed by other Governments, we would have a right to expect for our couriers the same immunities which are accorded to those of any other Government."

Mr. Seward, Sec. of State, to Mr. Dayton, June 21, 1862. MSS. Inst., France.

The United States Government will regard the detention by one belligerent of its minister to the other belligerent as a grave violation of international law.

Mr. Seward, Sec. of State, to Mr. Webb, Sept. 23, 1866. MSS. Inst., Brazil.

Free transit to a public minister may be demanded through a blockading squadron.

Mr. Seward, Sec. of State, to Mr. Webb, Aug. 17, 1868. MSS. Inst., Brazil.

Safe conducts in such cases are granted by the law of nations.

Mr. Fish, Sec. of State, to Mr. Kirk, June 17, 1869. MSS. Inst., Arg. Rep.

"The question which arose between General Hovey and the minister for foreign affairs of Peru, relative to the right of that Government

to obstruct the departure of Colonel Farrand, who had been appointed a bearer of dispatches by the general, seems to be of too much general importance to be left unnoticed by this Department. It is of no moment in the particular case, as the Peruvian Government ultimately connived at Colonel Farrand's departure.

"The occasion for the colonel's employment in the character adverted to was the conclusion of two treaties between the United States and Peru, which were signed on the 6th and 12th of last month. General Hovey's instructions recognized his right to make such an appointment in such a contingency. The appointment was made accordingly on the 12th of September, and Colonel Farrand's passport in his official character issued to him on that day without any information to General Hovey that any branch of the Peruvian Government or any person objected to the colonel's discharging the duties of his trust. It seems, however, that subsequently, but before the colonel could start on his errand, a person claiming to be a creditor of his sued out judicial process forbidding him to leave Peru. General Hovey promptly complained of this proceeding as contrary to international law relative to the immunities of couriers, as set forth in Wheaton's treatise on that subject. The minister, in his reply, while acknowledging the authority of Wheaton, endeavors to restrict the privilege of couriers as there declared to those appointed by a Government to its legations abroad, and enlarges upon the inconveniences which the more extensive enjoyment of such immunities would lead to. It is true that no abuse of the privilege in this case is alleged, but its existence is impliedly, at least, denied. This denial, however, has no support from Wheaton, or from any other writer on that branch of public law. If the Peruvian minister supposed that he had any reason to hesitate in acknowledging the unqualified character of the rule laid down by Wheaton, the plain and unequivocal terms in which Calvo speaks upon this point may be enough to remove any such hesitation. The work of this author on international law was published in Spanish at Paris, in 1868. It is remarkable as embracing everything illustrative of the subject up to the time of its publication, and its clearness and precision are at least equal to its fullness. At paragraph 240, on page 350 of the first volume, may be found the words of which the following is a translation:

"'The inviolability which public ministers enjoy has also been extended to the messengers and couriers of the embassies and to those who proceed to them with official dispatches, and as a general rule to all who discharge, as cases may arise, any commission for those embassies.'

"This, it seems, should be conclusive of the question. If General Hovey had been aware that Colonel Farrand was justly liable to arrest, and had willfully appointed him a bearer of dispatches to screen him therefrom, this would have been sufficient cause of complaint on the part of the Peruvian Government, and perhaps of censure of its minister by this

Government. Even this knowledge on the part of the general, however, would not, it is conceived, have impaired the immunity of his courier under the public law. If alleged delinquencies or pretended claims are trumped up against persons appointed or about to be appointed couriers in foreign countries to prevent them from starting, the immunity guaranteed to them by public law may at any time be annihilated by an envious or malicious person. This is a result to be deplored and guarded against by all Governments, by the Government of Peru as well as by the Government of the United States."

Mr. Fish, Sec. of State, to Mr. Brent, Oct. 19, 1870. MSS. Inst. Peru; For. Rel., 1870.

"The undersigned, after a careful consideration of the subject, and with every disposition to acknowledge the just and necessary belligerent rights of the blockading force, cannot acquiesce in the pretension set up on behalf of that force. It is true that, when such a force invests a fortified place with a view to its reduction, one of the means usually relied upon for that purpose is the interruption of ordinary communication by messengers or by letters. This is acknowledged to be not only a belligerent right, but also one incident to the actual sovereignty over the enemy's territory occupied by the assailant adjacent to the blockaded place. Paris, however, is the capital of France. There the diplomatic representatives of neutral states had their official residence prior to the investment. If they think proper to stay there while it lasts they must expect to put up with the inconveniences, necessarily incident to their choice. Among these, however, the stopping of communication with their Governments cannot be recognized. The right of embassy to a belligerent state is one which it is both the duty and the interest of its enemies to acknowledge and to permit the exercise of in every usual or proper way. If this right should be denied, or unduly curtailed, wars might be indefinitely prolonged, and general peace would be impracticable.

"The privilege of embassy necessarily carries with it that of employing messengers between the embassy and its Government. This is a privilege universally recognized by publicists. There is no exception or reservation made for the case of an embassy having its abode in a blockaded place. Indeed, the denial of the right of correspondence between a diplomatic agent in such a place and his Government seems tantamount to insisting that he cannot elect to be a neutral, but must be regarded as an adversary if he continues to stay there, especially when the legitimacy of the authority of those directing the resistance is denied by the other assailant.

"The opposite course, which it has suited the convenience of some neutral Government to adopt, is obviously liable to be construed, partly, at least, the occasion of withholding the privilege of correspondence. Should this be a correct view of the case, no independent state, claim-

ing to be a free agent in all things, could, in self-respect, acquiesce in a proceeding actuated by such a motive. The undersigned does not charge the Government of the North German Union with being so actuated, but deems himself warranted in thus referring to the point, as it is adverted to by the representative of that Government both at Berlin and before Paris.

"The undersigned is consequently directed to claim that the right of correspondence between the representatives of neutral powers at Paris and their Governments is a right sanctioned by public law, which cannot justly be withheld without assigning other reasons therefor than those which have hitherto been advanced. The burden of proof of the sufficiency of those reasons in furtherance of the belligerent rights of the assailant must be borne by him. While, however, the undersigned is directed to claim the right as due to all neutrals, he will not omit to acknowledge the partial exception made in favor of the minister of the United States for the reasons assigned."

Mr. Fish, Sec. of State, to Baron Gerolt, Nov. 21, 1870. MSS. Notes, Germ.; For. Rel., 1870.

"The refusal of the German authorities at the investment of Paris to allow the United States minister there to send a messenger to London with a pouch, with dispatches from his legation, unless the contents of the pouch should be unsealed, must be regarded as an uncourteous proceeding, which cannot be acquiesced in by this Government. Blockade by both sea and land is a military measure for the reduction of an enemy's fortress, by preventing the access of relief from without, and by compelling the troops and inhabitants to surrender for want of supplies. When, however, the blockaded fortress happens to be the capital of the country where the diplomatic representative of a neutral state resides, has the blockading force a right to cut him off from all intercourse by letter with the outer world, and even with his own Government? No such right is either expressly recognized by public law, or is even alluded to in any treatise on the subject. The right of legation, however, is fully acknowledged, and, as incident to that right, the privilege of sending and receiving messages. This privilege is acknowledged in unqualified terms. There is no exception or reservation looking to the possibility of blockade of a capital by a hostile force. Although such blockades are not of frequent occurrence, their liability to happen must have presented itself to the minds of the writers on public law, and, if they had supposed that the right of sending messengers was merged in or subordinate to the belligerent rights of the assailant, they certainly would have said so. Indeed, the rights of legation under such circumstances must be regarded as paramount to any belligerent right. They ought not to be questioned or curtailed, unless the attacking party has good reason to believe that they will be

abused, or unless some military necessity, which upon proper statement must be regarded as obvious, shall require the curtailment.

"The condition upon which the sending of messengers was offered was humiliating, and could not be accepted by any diplomatic agent with any self-respect. Correspondence between those officers and their Governments is always more or less confidential, and it is unreasonable to suppose that its inspection by the blockading force should be permitted. Indeed, the requirement of such a condition must be regarded as tantamount to an imputation both upon the integrity of the minister and the neutrality of his Government.

"You will consequently remonstrate against the exercise of authority adverted to as being contrary to that paramount right of legation which every independent nation ought to enjoy, and in which all are equally interested.

"Prussia has heretofore been a leading champion of the rights of neutrals on the ocean. She has, even during the existing war, made acknowledged sacrifices to her faith and consistency in that respect. The course of her arms on land does not seem to warrant or require any enforcement of extreme belligerent claims in that quarter as against neutrals.

"An analogous privilege of legation was upon several occasions successfully asserted by this Government during the late war between Brazil and her allies on the one side and Paraguay on the other. Mr. Washburn, the United States minister to Paraguay, applied for a permit to take him through the hostile lines to Asuncion, his destination. The application, though at first rejected, was ultimately granted. Application was subsequently made for leave for General McMahon, his successor, to pass the same lines, and for the vessel which carried him to bring back Mr. Washburn. This, also, though at first refused, was ultimately granted. There is reason to believe that the course taken by this Government on those occasions was approved by other Governments. It is probable that other Governments would also sanction the claim of the United States in this case."

Mr. Fish, Sec. of State, to Mr. Bancroft, Nov. 11, 1870. MSS. Inst. Germ.; For. Rel., 1870.

"I have received your No. 183, of the 21st ultimo, accompanied by the original of a letter from Count Bismarck replying to my note of November 21 to Baron Gerolt, and also a translation of the same. I am happy to think that the question discussed in my note, and in Count Bismarck's reply, is no longer one of practical application to any probable occurrences. It is therefore quite unnecessary to consider whether the approach of a hostile force, and its military preparations for the capture of a city which has been for ages the seat of Government and the capital of the country, where the political head of that country is and has been established, where its minister of foreign affairs has his office and his archives, where the representatives of

other powers have been and are resident, can so convert that city into a military fortress as to apply to it the rules of war applicable to fortresses as distinguished from other towns. Or whether such approach and military demonstrations of a hostile force impose upon the diplomatic representatives of other and neutral states the alternative of abandoning their posts and their duties, or of privation of the right of free and uninterrupted correspondence with their Government, which public law, no less than international comity, accords in the interest of peace. I inclose herewith copies of a correspondence between Mr. Washburne and Count Bismarck on the subject of the transmission of Mr. Washburne's dispatches. You will observe that in this correspondence Count Bismarck, under date of January 15, admits that the delay to which the transmission of the correspondence of this Government with its minister in Paris was subjected depended upon the principle adopted by the general staff of the German army, allowing no sealed packages or letters to pass through their lines in either direction without a stoppage of several days, and he cautiously disclaims one act of immediate transmission being taken as a precedent. The President desires to make all proper allowance for the military exigencies which are represented to have led to the withholding and detaining of the official correspondence of the minister, and is gratified to receive the recognition in Count Bismarck's letter of 28th of January to Mr. Washburne of the right of correspondence contended for in my note to Baron Gerolt of 21st November last, and his assurance that the delay to which it was subjected proceeded from causes which he could not remove.

"Recent events, it is confidently hoped, have removed the probability of any recurrence of the interruption of free correspondence. And Count Bismarck's assurance to Mr. Washburne that 'the delay occurring now and then in the transmission of your dispatch-bag is not occasioned by any doubt as to the right of your Government to correspond with you, but by obstacles it was out of my power to remove,' confirms this Government in its confidence of an entire agreement between it and North Germany on the question of the right and the inviolability of correspondence between a Government and its representative, and of the absence of any intentional interference with that right in the case of its minister to Paris. I send, herewith, a copy of a dispatch of this date to Mr. Washburne.

"As Count Bismarck's recognition of the right for which I contended in my note to Baron Gerolt is subsequent to his letter to you of 15th January, and admits what I felt it my duty to claim, there does not appear to be any necessity for continuing the discussion, unless the subject be again referred to by the German minister, in which case you are authorized to read to him this dispatch."

Mr. Fish, Sec. of State, to Mr. Bancroft, Feb. 24, 1871. MSS. Inst., Germ.; For. Rel., 1871.

"Your letters to Count Bismarck on the subject of the dispatch-bag, and its conveyance to and from Paris, meets the entire approval of the Department. It is dignified, forcible, and just.

"It was not unnatural that the powers besieging Paris during their long and terrible efforts should have had their susceptibilities aroused at times, by the various rumors and statements (originated and put in circulation possibly for the very purpose of operating upon those susceptibilities) of information prejudicial to their military operations being conveyed into and from the beleaguered capital.

"But it would be very much to be regretted, and would have been very unjust, had even a momentary suspicion found its lodgment in minds capable of achieving the results that have attended the civil and military operations of Germany toward the representative of a friendly state, and that representative being the one who, at the request of Germany, and with the consent of his own Government, had charged himself with the arduous and critical duty of the care and protection of the German residents shut in with the millions of Frenchmen in the capital which Germany was endeavoring to reduce by siege, starvation, and bombardment.

"The President observes, however, with satisfaction the very just disclaimer of any suspicion of the good faith of our conduct, in the letter of the chancellor of the North German Union to you, under date of 28th January last.

"The question of the right of uninterrupted correspondence between a neutral power and its representative, duly accredited and resident in the capital of a belligerent, which, while he is thus resident, becomes the object of attack and siege by another belligerent, is now, happily, no longer one of immediate practical application.

"It is satisfactory to notice that, although Count Bismarck, in his note addressed to you on 6th December last, speaks of 'obtaining for the legation of the United States the privilege of receiving closed dispatches,' in his note of January 28, from Versailles, he recognizes the principle asserted by me in a note addressed to Baron Gerolt on 21st November last (of which a copy was sent to you with my No. 206 of 22d November), and admits of no 'doubt as to the right of your Government to correspond with you.'

"The delays and interruptions to that right are, I trust, wholly of the past, and may have been, and it is hoped were, the unavoidable accidents of the then pending military strife. In the absence of any recurrence, we are content with the recognition so fully made by Count Bismarck of the right which we claimed."

Mr. Fish, Sec. of State, to Mr. Washburne, Feb. 24, 1871. MSS. Inst., France. Documents attached to President Hayes's message of Feb. 6, 1878.

"Couriers and bearers of dispatches, employed by a diplomatic agent in the service of his Government, are privileged persons, as far as is necessary for their particular service, whether in the state to which the

agent is accredited, or in the territories of a third state with which the Government they serve is at peace.

"It is expected that communications to the Department will be sent by mail; or, if by private hand, that no promise be made to the person so employed of compensation, or of a reimbursement of his expenses, without the previous authority of the Department, and that no ground of expectation of compensation or of reimbursement of expenses be given. It may happen that responsible private individuals offer their service, without expectation of compensation, for the conveyance of official communications to the Department, or from one legation to another. Such courteous offers may sometimes be accepted if deemed advisable.

"It is not intended to prevent diplomatic agents abroad from employing couriers at the public expense when the mails are obstructed, or deemed unsafe, and when there may be occasion to address the Department on subjects materially affecting interests of the United States which might suffer from delay or reasonably apprehended interruption in the transmission of the dispatch. The exercise of the utmost discretion is, however, enjoined in judging of these exigencies. Whenever the minister shall determine to send a courier, he will inform this Department of the fact, assigning the reasons therefor, and stating the compensation he recommends to be allowed him. The Secretary of State nevertheless reserves to himself the right in all cases to judge of the necessity for the employment of a messenger, and of the propriety of paying the whole or any part of the compensation which may have been recommended. This should be fully explained by the minister to the messenger before intrusting him with the dispatches.

"When a bearer of dispatches is employed as above, a special passport may be given to him by the diplomatic agent, setting forth his name and the duty he is to perform. Such a passport is to be furnished without charge, and is only good for the journey for which it is issued."

Printed Pers. Inst. Dip. Agents, 1885.

XXII. *PRIVILEGED FROM TESTIFYING.*

§ 98.

Whether an attaché of a foreign mission can be required to attend a local court of justice as a witness is a question at the outset for such court to determine.

Mr. Van Buren, Sec. of State, to Mr. Billé, Oct. 23, 1830. MSS. Notes, For. Leg.

In 1854 Mr. Dillon, then consul of France at San Francisco, was brought into the United States district court, then sitting, on an attachment for refusing to obey a subpœna *duces tecum* issued from that court to compel his attendance at a criminal trial then and there pending. Mr. Dillon protested against the process on two grounds: (1) Immunity from such process by international law; (2) immunity under the French-American treaty. The second point was merged in argument in the first, since it was agreed by counsel that the treaty privilege could not stand in the way of a party's constitutional right to meet the witness against him face to face, unless that privilege was in accordance with public international law. On this question the court (Hoffman, J.) spoke as follows:

"If the accused, by virtue of the constitutional provision in this case, can compel the attendance of the consul of France, it seems necessarily

to follow the attendance of an ambassador could in like manner be enforced.

"The immunity afforded to and personal inviolability of ambassadors, now universally recognized by the law of nations, has been deemed one of the most striking instances of the advance of civilization and the progress of enlightened and liberal ideas. Though resident in a foreign country to which they are deputed (1 Kent's Com., 45), their persons have, by the consent of all nations, been deemed inviolable; nor can they, says the same high authority, be made amenable to the civil or criminal jurisdiction of the country. By fiction of law the ambassador is considered as if he were out of the territory of the foreign power, and, though he resides within the foreign state, he is considered a member of his own country, retaining his original domicile, and the Government he represents has exclusive cognizance of his conduct and control over his person (1 Kent's Com., 46). Does, then, the Constitution of the United States, by the provision in favor of persons accused of crime, intend to subject these high functionaries to the process of the courts, and does it authorize and require the courts in case of disobedience to violate their persons and disregard immunities universally conceded to them by the law of nations, by imprisoning them? If, as is the received doctrine, the ambassador cannot, even in the case of a high crime committed by himself, be proceeded against, it is obvious that for a lesser offense of a contempt or disobedience to an order of a court, he would *a fortiori* not be amenable to the law. The only ground upon which the right of a court to compel the attendance of an embassador by its process, and to punish him if he disobey it, can be placed, is that the Constitution is in this case in conflict with and paramount to the law of nations, and the immunity usually conceded to ambassadors is, by the provision in favor of the accused in criminal cases, taken away.

"But the privilege of ambassadors from arrest, under any circumstances, has been declared by Congress by special legislation. By the twenty-fifth section of the act of Congress of April 30, 1790, it is enacted that 'if any writ or process sue out of any courts of the United States, or of a particular State, or by any judge or justice therein respectively, whereby the person of an ambassador may be arrested or imprisoned, or his goods distrained, seized, or attached, such writ and process shall be deemed and adjudged to be utterly null and void to all intents, construction, and purposes whatever.'"

When the attachment was served on Mr. Dillon, he hauled down his consular flag; and the case was taken up by the French minister at Washington, as involving a gross disrespect to France. A long and animated controversy between Mr. Marcy, then Secretary of State, and the French Government ensued. The fact that an attachment had issued under which Mr. Dillon was brought into court was regarded by the French Government as not merely a contravention of the treaty, but an offense by international law; and it was argued that the disrespect was not purged by the subsequent discharge of Mr. Dillon from arrest. It was urged, also, that the fact that the subpœna contained the clause *duces tecum* involved a violation of the consular archives. Mr. Marcy, in a letter of September 11, 1854, to Mr. Mason, then minister at Paris, discusses these questions at great length. He maintains that the provision in the Federal Constitution giving defendants opportunity to meet witnesses produced against them face to face, overrides conflicting treaties, unless in cases where such treaties embody exceptions to this right recognized as such when the Constitution was framed. One of these

exceptions relates to the case of diplomatic representatives. "As the law of evidence stood when the Constitution went into effect," says Mr. Marcy, "ambassadors and ministers could not be served with compulsory process to appear as witnesses, and the clause in the Constitution referred to did not give the defendant the right in criminal prosecutions to compel their attendance in court." This privilege, however, Mr. Marcy maintained, did not extend to consuls, and consuls, therefore, could only procure the privilege when given to them by treaty which, in criminal cases, was subject to the limitations of the Constitution of the United States. Mr. Marcy, however, finding that the French Government continued to regard the attachment, with the subpœna *duces tecum*, as an attack on its honor, offered, in a letter to Mr. Mason, dated January 18, 1855, to compromise the matter by a salute to the French flag upon a French man-of-war, stopping at San Francisco. Count de Sartiges, the French minister at Washington, asked in addition that when the consular flag at San Francisco was rehoisted, it should receive a salute. This was declined by Mr. Marcy. In August, 1855, after a long and protracted controversy, the French Government agreed to accept as a sufficient satisfaction an expression of regret by the Government of the United States, coupled with the provision that "when a French national ship or squadron shall appear in the harbor of San Francisco the United States authorities there, military or naval, will salute the national flag borne by such ship or squadron with a national salute, at an hour to be specified and agreed on with the French naval commanding officer present, and the French ship or squadron whose flag is thus saluted will return the salute gun for gun."

In re Dillon, 2 Sawyer, 564, 565.

As to saluting flag, see *infra*, § 315.

"The Constitution is to prevail over a treaty where the provisions of the one come in conflict with the other. It would be difficult to find a reputable lawyer in this country who would not yield a ready assent to this proposition. Mr. Dillon's counsel admitted it in his argument for the consul's privilege before the court in California. The sixth amendment to the United States Constitution gives, in general and comprehensive language, the right to a defendant in criminal prosecutions to have compulsory process to procure the attendance of witnesses in his favor. Neither Congress nor the treaty-making power are competent to put any restriction on this constitutional provision. There was, however, at the time of its adoption, some limit to the range of its operation. It did not give to such a defendant the right to have compulsory process against all persons whatever, but only against such as were subject to subpœna at that time, such as might by existing law be witnesses. There were then persons and classes of persons who were not thus subject to that process, who, by privileges and mental disqualifications, could not be made witnesses, and this constitutional provision did not confer the right on the defendant to have compulsory process against them. As the law of evidence stood when the Constitution went into effect, ambassadors and ministers could not be served with compulsory process to appear as witnesses, and the clause in the Constitution referred to did not give to the defendant in criminal prosecutions the right to com-

pel their attendance in court. But what was the case in this respect as to consuls? They had not the diplomatic privileges of embassadors and ministers. After the adoption of the Constitution the defendant in a criminal prosecution had the right to compulsory process to bring into court as a witness in his behalf any foreign consul whatsoever. If he then had it, and has it not now, when and how has this constitutional right been taken from him? Congress could not take it away, neither could the treaty-making power, for it is not within the competence of either to modify or restrict the operation of any provision of the Constitution of the United States."

Mr. Marcy, Sec. of State, to Mr. Mason, Sept. 11, 1854. MSS. Inst., France. See as to paramount authority of Constitution in such cases, Mr. Marcy, Sec. of State, to Mr. Mason, Jan. 18, 1855. *Ibid.*

"France was the early and efficient ally of the United States in their struggle for independence. From that time to the present, with occasional slight interruptions, cordial relations of friendship have existed between the Governments and people of the two countries. The kindly sentiments, cherished alike by both nations, have led to extensive social and commercial intercourse, which, I trust, will not be interrupted or checked by any casual event of an apparently unsatisfactory character. The French consul at San Francisco was, not long since, brought into the United States district court at that place, by compulsory process, as a witness in favor of another foreign consul, in violation, as the French Government conceives, of his privileges under our consular convention with France. There being nothing in the transaction which could imply any disrespect to France or its consul, such explanation has been made as I hope will be satisfactory. Subsequently, misunderstanding arose on the subject of the French Government having, as it appeared, abruptly excluded the American minister to Spain from passing through France, on his way from London to Madrid. But that Government has unequivocally disavowed any design to deny the right of transit to the minister of the United States; and, after explanations to this effect, he has resumed his journey, and actually returned through France to Spain. I herewith lay before Congress the correspondence on this subject between our envoy at Paris and the minister of foreign relations of the French Government."

President Pierce, Second Annual Message, 1854.

"A case of homicide having occurred at Washington, in 1856, in the presence of the Dutch minister, whose presence was deemed altogether material for the trial, 'and inasmuch as he was exempt from the ordinary process to compel the attendance of witnesses,' an application was made by the district attorney, through the Secretary of State, to Mr. Dubois to appear and testify. The minister having refused, by the unanimous advice of his colleagues, in a note of the 11th of May, 1856, to the Secretary of State, to appear as a witness, Mr. Marcy instructed, May 15, 1856, Mr. Belmont, minister of the United States at

the Hague, to bring the matter to the attention of the Netherlands Government. He says, that 'it is not doubted that both by the usage of nations and the laws of the United States, M. Dubois has the legal right to decline to give his testimony; but he is at perfect liberty to exercise this privilege to the extent requested, and by doing so he does not subject himself to the jurisdiction of the country. The circumstances of this case are such as to appeal strongly to the universal sense of justice. In the event of M. Van Hall's suggesting that M. Dubois might give his deposition out of court in the case, you will not omit to state that by our Constitution, in all criminal prosecutions, the accused has the right to be confronted with the witnesses against him, and hence, in order that the testimony should be legal, it must be given before the court.' M. Van Hall, June 9, 1856, in a note to Mr. Belmont, declined authorizing the minister to appear in court. He said that 'availing himself of a prerogative generally conceded to the members of the diplomatic body, and recognized also by the laws of the Republic, as adverted to by Mr. Marcy, M. Dubois refused to appear before a court of justice; but being desirous to at once reconcile that prerogative with the requirements of justice, he suggested a middle course of action, and proposed to Mr. Marcy to give his declaration under oath, should he be authorized to that effect by the Government of the Netherlands. After taking the King's orders on the subject, I did not hesitate to give such authority to M. Dubois, approving at the same time, and formally, the line of conduct which he pursued on that occasion.' M. Dubois addressed a note to Mr. Marcy, on the 21st of June, stating that he was authorized to make his declaration under oath at the Department of State, adding, 'it is understood that, on such an occasion, no mention is to be made of a cross-examination, to which I could not subject myself.' The declaration was not taken, as the district attorney stated that it would not be admitted as evidence."

Lawrence's Wheaton (ed. 1863), 393, 394.

The correspondence of the Government of the Netherlands, in refusing to allow its diplomatic agent to testify in the criminal courts of the United States, is given in Senate Ex. Doc. No. 21, 34th Cong., 3d sess.

See also Dana's Wheaton, § 225, note 125.

On the trial of Guiteau, Señor Camacho, minister from Venezuela, who was present at President Garfield's assassination, was called as a witness for the prosecution. Before he was sworn the following statement was made by the district attorney:

"If your honor please, before the gentleman is sworn, I desire to state, or rather I think it due to the witness to state, that he is the minister from Venezuela to this Government, and entitled under the law governing diplomatic relations to be relieved from service by subpœna or sworn as a witness in any case. Under the instructions of his Government, owing to the friendship of that Government for the United States, and the great respect for the memory of the man who was assassinated, they have instructed him to waive his rights and appear as a witness in the case, the same as any witness who is a citizen of this country."

Guiteau's Trial, I, 136. See, also, App., Vol. III, § 93.

"A foreign diplomatic representative cannot be compelled to testify, in the country of his sojourn, before any tribunal whatsoever. This right is regarded as appertaining to his office, not to his person, and is

one of which he cannot divest himself except by the consent of his Government. Therefore, even if a diplomatic agent of the United States be called upon to give testimony under circumstances which do not concern the business of his mission, and which are of a nature to counsel him to respond in the interest of justice, he should not do so without the consent of the President, obtained through the Secretary of State, which in any such case would probably be granted."

Printed Pers. Inst. Dip. Agents, 1885.

As to consular privileges in this respect, see *infra*, § 120.

XXIII. *CANNOT BECOME BUSINESS AGENTS.*

§ 99.

A public minister cannot act as agent for the collection of private claims without injury to the dignity and decorum of the public service.

Mr. J. Q. Adams, as reported in 4 Mem. J. Q. Adams, 347.

It is not within the province of the Department of State to make inquiries abroad as to matters of the purely private business of citizens of the United States, though applied to by such citizens.

Mr. Buchanan, Sec. of State, to Mr. Hough, Mar. 13, 1846. MSS. Dom. Let.

The Department will not, at the suit of private claimants, call upon foreign ministers to make inquiries in the countries where they are resident as to the business interests of such claimants.

Mr. Marcy, Sec. of State, to Mr. Reedy, Aug. 21, 1856. MSS. Dom. Let. Mr. Marcy to Mr. French, Dec. 12, 1856; *ibid.*

"It is not within the province of a minister of the United States abroad to present private claims unless they are the result of a violation of international law by the Government addressed."

Mr. Fish, Sec. of State, to Mr. Eliot, May 12, 1869. MSS. Dom. Let.

"The aid of the diplomatic representatives of the Government is frequently requested for the prosecution of private investigations, but this Department does not feel justified in being the medium of conveying requests of that character, which necessarily involve much labor and investigation, and occasionally considerable expense,—and when sometimes an official sanction may be inferred from the source through which certain facts are obtained, to the private and individual theories of the author who may use the information thus obtained through official channels.

"It is a rule, therefore, of this Department not to impose upon the diplomatic agents of the Government the labor of obtaining information of the kind sought by Mr. Burt, except when sought for the official use of some of the Departments of Government.

"In the present case it is believed, from the nature of the information sought, that Mr. Burt will find little difficulty in obtaining it through other agencies. There will be no objection to his making an *individual*

application in his own name to the minister at Vienna, who will be at liberty, if he is thus inclined, to undertake the labor. But this Department cannot impose the task upon him."

Mr. Fish, Sec. of State, to Mr. Richardson, Nov. 1, 1873. MSS. Dom. Let.

"A standing rule of the service prevents ministers from acting as claim agents or bankers for citizens at home in their dealings with the foreign Government to which they are accredited, unless the Department gives them permission to do so."

Mr. Frelinghuysen, Sec. of State, to Mr. Wright, Apr. 5, 1884. MSS. Dom. Let. See Mr. Evarts, Sec. of State, to Mr. Yoder, May 21, 1880. MSS. Dom. Let., *infra*, § 123.

"It is no part of the business of a legation to act as a safe-deposit institution, and no responsibility (of insurance) can attach to the minister if he yield to the request and take such property into his keeping without valuable consideration."

Mr. Bayard, Sec. of State, to Mr. Cox, Dec. 23, 1885. MSS. Inst., Turkey.

"It is no part of the duty of this Department or of the diplomatic or consular officers of the United States abroad to attend to the prosecution of the private claims of American citizens in foreign states, especially in countries like Great Britain, where the courts of justice are open to them."

Mr. Bayard, Sec. of State, to Miss Heald, July 9, 1886. MSS. Dom. Let.

"The interposition of diplomatic agents is often asked by their countrymen to aid in the collection of claims against the Government to which they are accredited. If the claim is founded in contract, they will in no event interfere without specific instructions to do so. If it is founded in tort, they will as a general rule in like manner seek previous instructions before interfering, unless the person of the claimant be assailed, or there be pressing necessity for action in his behalf before they can communicate with the Department; in which event they will communicate in full the reasons for their action."

Printed Pers. Inst., Dip. Agents, 1885.

XXIV. *NOR REPRESENT FOREIGN GOVERNMENTS.*

§ 100.

A minister plenipotentiary of the United States cannot, without the consent of Congress, accept a similar commission from another power, though he is not prohibited from rendering a friendly service to a foreign power, even that of negotiating a treaty for it, provided he does not become an officer thereof.

13 Op., 537, Akerman, 1871. As to joint action with other diplomatists, see *infra*, § 102.

"Diplomatic officers are sometimes requested to discharge temporarily the duties of those of other countries. It may be proper as a

matter of comity to accede to such requests, but not (unless under urgent circumstances) until permission has been granted by the Department of State. Diplomatic officers, however, are prohibited by the Constitution (art. 1, sec. 9) from performing, without the consent of Congress, any duties for any foreign Government which involve the acceptance of office from such foreign Government."

Printed Pers. Inst., Dip. Agents, 1885.
As to gratuitous services in such cases, see *infra*, § 105.

XXV. *SHOULD RESIDE AT CAPITAL.*

§ 101.

"If the President has in one or two instances acquiesced in the residence of foreign ministers in a distant city of the Union, it has been because they have had but little business to transact with this Government, and because their residence there has given rise to no complaint of breach of privilege on the one hand or of personal injury to American citizens on the other."

Mr. Clay, Sec. of State, to Mr. Tacon, Dec. 10, 1828. MSS. Notes, For. Leg.
As to Mr. Jackson's action in this line, see *infra*, § 107.

The practice of residence of foreign legations at other places than the capital is beset with many inconveniences, and cannot be looked upon with satisfaction by the Government of the United States.

Mr. Van Buren, Sec. of State, to Mr. Billé, Oct. 23, 1830. MSS. Notes, For. Leg.

XXVI. *JOINT ACTION WITH OTHER DIPLOMATIC AGENTS UNADVISABLE.*

§ 102.

The policy of the United States precludes, as a rule, the appointment of special diplomatic agents to confer with those concerned in political movements abroad.

Mr. Forsyth, Sec. of State, to Mr. Kaufman, April 30, 1840. MSS. Dom. Let.
But consultation between the several diplomatic representatives at a foreign capital, resulting in the assumption of a common attitude in cases of public emergency, is not inconsistent with the above rule. *Supra*, §§ 61, 67, 68, 68*a*; *infra*, § 105.

"It is, of course, neither possible nor desirable to avoid a free interchange of opinion between the representative of the United States and the representatives of other powers upon questions of common concern arising in foreign capitals. Such free communication is not only approved, but is especially commended. At the same time care should be taken to avoid, as far as possible, formal conventions in which propositions are considered, with an understanding or agreement that a decision by a majority of representatives shall commit or bind the representative of the United States. A consent on your part to give such an effect to a decree of a council of representatives would be virtually a proceeding derogating from the authority of the President, and if

approved by him would have the seeming but unreal operation to bind the United States by his own individual act, in derogation of the Constitution, which requires that no engagement shall be made with foreign powers other than by treaty solemnly celebrated by the President and duly ratified by the Senate."

Mr. Seward, Sec. of State, to Mr. Hovey, Feb. 25, 1867. MSS. Inst. Peru. See *supra*, § 90. App., Vol. III, § 102.

As to importance of union between diplomatic agents abroad, see 8 John Adams' Works, 547, 549.

As to joinder of foreign ministers at Japan and China, see *supra*, §§ 67–68.

As to joint action with other powers in respect to affairs in South America, and the West Indies, see *supra*, § 57. The objections to such action are stated by Mr. Everett, in notes to Count Sartiges and Lord John Russell, given *supra*, § 72.

XXVII. *DUTIES AS TO ARCHIVES.*

§ 103.

"The instructions of this Department to its diplomatic agents abroad have for a long series of years past strictly prohibited ministers from retaining for their private information or use copies of any correspondence of record in their legations. This rule has been found necessary, not only because such archives are public property, which no private person has a right to possess, but also because however great the discretion of the minister doing so may be during his lifetime, yet, after his death the instances in which valuable papers in relation to the confidential intercourse of this Government with foreign states may pass through other hands into unguarded publicity, are not rare."

Mr. Evarts, Sec. of State, to Mr. Tuttle, May 19, 1879. MSS. Dom. Let.

"The following record books should be kept at all missions of the United States abroad:

"A *dispatch-book*, into which are to be copied all official communications written by the diplomatic agent to the Department of State. Press-copy books are not to be considered as permanent records.

"A *note-book*, into which are to be copied all official communications written by the diplomatic agent to the Government to which he is accredited.

"A *letter book*, into which are to be copied all other official communications written by the diplomatic agent. This book should contain the record of his letters to the consular officers under his jurisdiction.

"A *passport-book*, in which are to be registered all passports issued or visaed by the diplomatic agent.

"A *miscellaneous record-book*, for the entry of those official papers and records which cannot conveniently be classified and entered in the record books above named—and in this book should be included also copies of such translations of official papers as the diplomatic agent may forward with his dispatches to the Department of State.

"A *register of official letters received at the legation*, which shall embrace the following information: Name of the writer, number and date of letter, when received, its import, and remarks thereon, as prescribed in the form hereto annexed.

"A *register of official letters sent from the legation*, stating the date and import of the letter, and the name of the person to whom sent, as prescribed in the form hereto appended.

"A *quarterly account-current book*, in which shall be recorded the accounts of the diplomatic agent and the legation accounts for contingencies.

"When a paper of any description is entered or recorded in either of the said books, it must be indexed by a reference both to the name of the author and the subject of the paper.

"Instructions from the Department, and all official or business notes to the legation, intended to be permanently kept there, shall be indorsed with a short note of the contents and filed (not folded), until a sufficient number shall accumulate to form a volume, when they shall be bound.

"All diplomatic agents are instructed, with a view to facilitate reference to previous correspondence, to keep in their offices the prescribed registers of all the documents, papers, letters, and books which have been, or which may be, at any time received, and also of those forwarded by them on matters connected with their official duties.

"The copied records in the books above prescribed will include protocols of conferences, notes of official conversations, copies of correspondence, and every memorandum necessary to a full understanding of the history of the mission.

"Such ministers of the United States as by law are not allowed a secretary of legation will themselves keep up the record of their legations. Any such minister who may neglect this duty will be chargeable with the expense which the Government may incur in consequence of his neglect.

"The public interest, and the convenience of official intercourse with diplomatic representatives abroad, require that every successor to a mission should be thoroughly acquainted with all the directions that may have been given by this Department to his predecessors, and all that may have been done by them in their official capacity. It is therefore the imperative duty of all diplomatic agents to carefully familiarize themselves with the records of their missions, and to preserve the archives of their own as well as of preceding terms with the utmost care for the benefit of their successors in office."

Printed Pers. Inst. Dip. Agents, 1885.

By article 11 of the treaty of 1819 between the United States and Spain, the Department of State was made the depository of the records and papers referred to in the article. They should not be delivered to the claimants, and any law of Congress which should authorize or direct them to be delivered up would be a violation of the treaty.

2 Op., 515, Taney, 1832.

XXVIII. *RIGHT OF PROTECTION AND ASYLUM.*

§ 104.

Under this head the privileges of asylum of consuls as well as of diplomatic agents will be considered.

The report of Mr. Livingston, Sec. of State, on Apr. 2, 1832, in regard to refuge given in 1831 by the United States ship St. Louis to the Vice-President of the Republic of Peru and General Miller, will be found in House Ex. Doc., No. 272, 22d Cong., 1st sess.

The right of diplomatic asylum in revolutionary times and in revolutionary countries should be indulgently construed.

Mr. Calhoun, Sec. of State, to Mr. Wise, July 18, 1844. MSS. Inst., Brazil.

"A minister in a foreign country is regarded by the public law as dependent of the local jurisdiction within which he resides, and responsible for any offenses he may commit only to his own Government. he same peculiar character belongs, also, to his suite, his family, and e members of his household, and in whatever relates to himself or to em is extended even to the mansion which he occupies. Whether asylum can be violated under any circumstances, it is unnecessary, this occasion, to inquire; but there is no doubt whatever that, if it n be rightfully entered at all without the consent of its occupant, it n only be so entered in consequence of an order emanating from the preme authority of the country in which the minister resides, and for hich it will be held responsible by his Government."

Mr. Buchanan, Sec. of State, to Mr. Shields, Mar. 22, 1848. MSS. Inst., Venez.

Though the privileges of asylum in Mohammedan states, as well as South America, are more liberally dispensed than in the leading uropean states, they should be in all cases carefully guarded.

Mr. Clayton, Sec. of State, to Mr. McCauley, May 31, 1849. MSS. Inst. Barb. Powers. Mr. Clayton to Mr. Gaines, Oct. 3, 1849; Mr. Marcy to Mr. De Leon, Dec. 23, 1853; *ibid.*

"I was well aware of the custom of the representatives of Christian owers in the Barbary States to extend the protection of their flags over any individuals who are not citizens of their respective countries, nd who cannot be properly considered as officials, such as brokers, nterpreters, &c. But whilst I deem it the duty of the consuls to proect American citizens, and necessary and useful official persons conected with their consulates, they ought scrupulously and carefully to bstain from all interference in behalf of individuals who are neither itizens nor have any rightful claim to our protection, and the more specially when such protection is likely to bring the American consul to any kind of conflict with the rights and prerogatives of the representatives of friendly powers."

Mr. Clayton, Sec. of State, to Mr. McCauley, Jan. 14, 1850. MSS. Inst. Barb. Powers.

Acquiescence by the Government of Chili on former occasions in the xercise of the hospitality of asylum in its larger sense may preclude hat Government from objecting to the continued granting such hospiality to the same extent. At the same time, if that Government makes bjection to a granting of that hospitality to a particular political refugee, he minister of the United States, in whose house such refugee is sheltered, should advise him that this shelter can no longer be afforded.

Mr. Webster, Sec. of State, to Mr. Peyton, July 2, 1851. MSS. Inst., Chili.

"Neither the law of nations nor the stipulations of our treaty with Peru recognize the right of consuls to afford protection to those who have rendered themselves obnoxious to the authority of the Government under which they dwell. * * *

"The subsequent course of the governor, in sending to the consulate and arresting the insurgents, cannot be condemned by this Government. The national flag was not insulted, nor the national dignity affected, by this proceeding. The former had been unwarrantably used. Under the treaty it would and should have protected the property of the consulate and the persons and property of American citizens, but in this case no such plea for its use can be presented. The Government of the United States would not permit such an abuse of a foreign flag by a foreign consul to be made with impunity."

Mr. Marcy. Sec. of State, to Mr. Clay, Jan. 24, 1854. MSS. Inst., Peru.

"This Government will not consent that its consuls in Turkey shall be denied any privileges in regard to protecting persons not citizens of the United States which may be enjoyed by the consuls of other nations who have no special treaty stipulations on the subject. If custom in Turkey gives to foreign consuls the right of protecting even Ottoman subjects, it is presumed that this right is limited to such persons as may be absolutely necessary for the discharge of the consular functions, and must have originated and be tolerated on account of the difficulty of obtaining persons, not subjects of the Porte, sufficiently acquainted with the Oriental languages. It is obvious, however, that it is the duty of the consul to exercise this privilege with discretion, and not to employ any person for the purpose of screening him from prosecution for offenses against the laws of the country or any one known to be reasonably objectionable to the Government."

Mr. Marcy, Sec. of State, to Mr. De Leon, Aug. 16, 1854. MSS. Inst., Barb. Powers. To the same effect see letter of Mr. Seward, Sec. of State, to Mr. Hale, Dec. 11, 1866, *ibid.*; Mr. Fish, Sec. of State, to Mr. Beardsley, Mar. 31, 1873, *ibid.*; Mr. Fish to Mr. Jones, Nov. 16, 1876. See also circular of May 1, 1871; Mr. Evarts to Mr. Mathews, Mar. 13, 1880, *ibid.* See, as sustaining this view, Mr. Marcy's note on the Koszta case, Sept. 26, 1853; *infra*, § 198.

A consul of the United States in Nicaragua has no right, as such, "under the law of nations to make his dwelling an asylum for persons charged with crimes or offenses against that Government."

Mr. Marcy, Sec. of State, to Mr. Wheeler, May 11, 1855. MSS. Inst., Am. St.

Violent entrance in a consul's house by soldiers, and misconduct therein, constitute an international wrong, for which the Government commissioning such consul is entitled to demand redress.

Mr. Cass, Sec. of State, to Mr. Bigler, June 17, 1859; Aug. 16, 1859; May 1, 1860. MSS. Inst., Chili.

During an insurrection in Valparaiso, early in 1859, Mr. Trevitt, consul of the United States, received into his house as an asylum certain political refugees. His house was subsequently attacked by Chilian

soldiery, the surrender of the refugees effected, and his exequatur recalled by the Chilian Government. Mr. Bigler, United States minister at Chili, when reporting these facts, informed the Secretary of State that "the English consul at Talcahuano had recently given asylum to a certain number of refugees under circumstances similar to those under which Consul Trevitt had acted at Valparaiso, but that the Chilian Government had manifested no dissatisfaction with his conduct." * * * Information was also given "that the practice on the part of consuls extending asylum to political refugees is almost generally permitted in the Pacific Republics, and in none more frequently than in Chili." Mr. Cass, Secretary of State, then instructed Mr. Bigler that "if this be so, the existence of such an usage, taken in connection with the statement you make in regard to the English consul, would go far to induce this Government to require the restoration of Mr. Trevitt's *exequatur*."

Mr. Cass to Mr. Bigler, June 17, 1859. MSS. Inst. Chili. See Mr. Cass to Mr. Bigler, Aug. 16, 1859, on the refusal of the Chilian Government to recall the *exequatur*.

"All Christian nations refuse to the Government of Morocco any right, power, or control whatever, in any circumstances, over the persons or property of Christians, or Franks, as they are called, residing in that Empire."

Mr. Seward, Sec. of State, to Mr. McMath, Apr. 28, 1862. MSS. Inst., Barb. Powers.

"Every citizen of the United States is required, when in Morocco, to seek from the consul and have a certificate showing that he is under the consul's protection. Failing to obtain this he has no right by law to remain there."

Ibid.

"The President hears with surprise and regret rumors of abuses of the privilege of granting protections committed by persons vicariously exercising consular functions in behalf of this Government within His Imperial Majesty's dominions. Recent improvements of administration present some grounds for believing that that privilege might now be relinquished without serious prejudice to the interests of the United States. It is not supposed, however, that in the event of either a radical change of administration, or of the occurrence of religious or other domestic disturbance in the capital or the provinces, the right of granting protections as heretofore exercised would be found indispensable to the safety of citizens sojourning in Turkey. In view of these opposing considerations the President has determined that you may announce to the minister for foreign affairs that the power of the ministers and of consuls to grant protection will, until further notice, be restrained so as to allow them to issue only to persons in the actual service of the United States. This restriction will not be deemed to have any bearing upon

passports to American citizens granted by this Department or other proper authority."

Mr. Seward, Sec. of State, to Mr. Morris, Sept. 19, 1864. MSS. Inst., Turkey.

"1. Consuls may harbor political refugees, but as the law of nations confers upon them no right to do this, and as the treaty between the United States and Hayti is silent upon the subject, no sufficient cause of complaint would arise if refugees so harbored were to be taken by the local authorities from the consular abode.

"2. The local authorities have an abstract right to forbid the employment of a foreign naval force to protect the houses of consuls, even in emergencies such as those to which you refer. That employment may, however, be justifiable under circumstances similar to those which are reported at Cape Haytien.

"3. Strictly speaking, the consular flag can only be properly displayed over the residence of the consul himself. If, however, he should think proper to fly it elsewhere, with a view to protect the property of his countrymen, or property in which they may be interested, he must do this at the risk of having that emblem disregarded by the foreign authorities. This Department cannot authorize or direct any such use of the flag of the United States, but will not censure it unless the act should formally be complained of by the foreign Government."

Mr. Hunter, Acting Sec. of State, to Mr. Peck, Oct. 4, 1865. MSS. Inst., Hayti.

"Your painfully interesting dispatch of the 8th of May, No. 3, has been received. The lawless condition of society in Hayti which you describe is a subject of grave concern and deep regret. The proceedings by which you remonstrated and reasoned with the Government in the interest of public peace and safety at Port au Prince are approved. The Secretary of the Navy, on receiving the first intimation of the extreme revolutionary disturbances in Hayti, took the necessary measures for the dispatch of a ship of war to Port au Prince, to be employed, if necessary, for the protection of the lives and property of citizens of the United States.

"You request an instruction on the subject of the continuance of the exercise of the right of asylum by the legation. The question is attended with much embarrassment. The right of a foreign legation to afford an asylum to political refugees is not recognized by the law of nations as applicable to civilized or constitutionally organized states. It is a practice, however, which, from the necessity of the case, is exercised to a greater or less extent by every civilized state in regard to barbarous or semi-barbarous countries. The revolutionary condition seemed to become chronic in many of the South American nations after they had achieved their independence, and the United States, as well as the European nations, recognized and maintained the right of asylum in their intercourse with those Republics. We have, however, constantly employed our influence, for several years, to meliorate and im-

prove the political situation in these Republics, with an earnest desire to relinquish the right of asylum there. In the year 1867 we formally relinquished and renounced that right in the Republic of Peru. This Government has also largely modified the exercise of that right among some of the Oriental nations.

"Thus we are prepared to accept the opinion you have deliberately expressed that it is no longer expedient to practice the right of asylum in the Haytien Republic. Nevertheless, we should not be willing to relinquish the right abruptly, and in the midst of the anarchy which seems to be now prevailing in Hayti, in the absence of matured convictions on your part. Nor do we think it expedient that it should be renounced by the United States legation any sooner or in any greater degree than it is renounced by the legations of the other important neutral powers. With these reservations, the subject is confidently left to your own discreet judgment."

Mr. Seward, Sec. of State, to Mr. Hollister, May 28, 1868. MSS. Inst. Hayti; Dip. Corr., 1868.

"The immunities of an ambassador are not of a personal character. They belong to the Government of which he is the representative. It is to be regretted, therefore, that you treated the invasion of your house and the arrest therein of your servants as a personal offense, to be atoned for by the simple release of the persons arrested, and a private note expressive of regret.

"This act, especially when regarded in connection with a recent invasion of the commercial agency at St. Marc, and other acts of disrespect, and of neglect of diplomatic and international courtesies, is significant of an intent which should have elicited from you a more emphatic protest than your unofficial communication to the Secretary of State, and a demand for more decided redress than that which you were content to accept."

Mr. Fish, Sec. of State, to Mr. Bassett, March 26, 1873. MSS. Inst. Hayti; For. Rel., 1873.

"Your dispatches, numbered 364 and 365, of the 8th and 19th ultimo, respectively, have been received. They relate to the recent disturbances at Port au Prince, and to persons who have sought an asylum in the legation. It is regretted that you deemed yourself justified by an impulse of humanity to grant such an asylum. You have repeatedly been instructed that such a practice has no basis in public law, and, so far as this Government is concerned, is believed to be contrary to all sound policy. The course of the diplomatic representatives of other countries in receiving political refugees upon such occasions is not deemed sufficient to warrant this Government in sanctioning a similar step on the part of the representatives of the United States. Among other objections to granting such an asylum it may be remarked that that act obviously tends so far to incite conspiracies against Govern-

ments, that if persons charged with offenses can be sure of being screened in a foreign legation from arrest they will be much more apt to attempt the overthrow of authority than if such a place of refuge were not open to them.

"Mr. Preston has been here by order of his Government to ask that you may be directed to set at large the refugees who have sought your protection. I answered him, however, that though it might have been preferable that you should not have received those persons, it was not deemed expedient to comply with his request. I added that if his Government would apply to you for them, in order that they might be tried, you would be authorized to give them up, provided the Government gives you its assurance that no punishment shall result from the trial, but that, if convicted, the parties will be allowed, without molestation, to leave the country. If, too, the persons who are with you should themselves or through you offer to surrender to the authorities on the same condition, and should it be acceptable, you will dismiss them."

Mr. Fish, Sec. of State, to Mr. Bassett, June 4, 1875. MSS. Inst. Hayti; For. Rel., 1875.

"The undersigned, Secretary of State of the United States, has the honor to acknowledge the receipt of the note of the 25th instant addressed to this Department by Mr. Preston, the minister plenipotentiary of Hayti. It refers to a recent conversation between him and the undersigned upon the subject of certain Haytians to whom Mr. Bassett, the United States minister at Port au Prince, had granted an asylum in his legation. As a result of that conference, an instruction was at once addressed by this Department to Mr. Bassett, on grounds which were orally indicated by the undersigned to Mr. Preston. Too short a time, however, has since elapsed for Mr. Bassett to have carried those instructions into effect and to have reported to this Department upon the subject.

"The undersigned acknowledges that it is desirable that the question which has been raised by the course of Mr. Bassett should be promptly and satisfactorily settled.

"The undersigned is, however, not a little surprised at that part of Mr. Preston's note in which he represents that the undersigned had given him assurances that no United States men-of-war would be ordered into Haytian waters. The undersigned is sure that he neither made any such promise nor used words which could fairly be construed as a pledge of the kind. Pursuant to general orders, naval vessels of the United States sometimes touch at ports where the lives and property of citizens may be supposed to be in peril. If any have recently visited the harbors of Hayti, the undersigned is not aware that they have been specially ordered thither."

Mr. Fish, Sec. of State, to Mr. Preston, June 29, 1875. MSS. Notes, Hayti, For. Rel., 1875.

"I transmit a copy of a note of the 25th ultimo, addressed to this Department by Mr. Preston, the minister of Hayti accredited to this Government. It relates to the asylum which you thought proper to grant to political refugees in that country, and represents that you had not complied with a request which had been made of you by the Government to furnish it with a list of them. It also says that some of them were received at your legation with arms and ammunition. As your dispatches have been silent upon these points, an explanation in regard to them will be desirable.

"It is presumed that the decisive course which you have thought proper to adopt in regard to the refugees adverted to has been taken in full view of your accountability not only to your own Government, but to that to which you are accredited. Whatever may be our disposition to receive reasons to palliate or justify your proceedings, it is still in the power of the Haytian Government to refuse to be satisfied with them. This is a consideration which should always be borne in mind by a diplomatic agent. While he should not allow it to affect his sense of duty, he should be well aware of the consequence which may attend its conscientious discharge."

Mr. Fish, Sec. of State, to Mr. Bassett, July 1, 1875. MSS. Inst., Hayti; For. Rel., 1875.

"You are aware that Mr. Bassett, the minister resident of the United States at Port au Prince, has thought proper to receive into his official residence certain political refugees. This act on his part has not been approved by this Department, as it is not sanctioned by public law, though it is in conformity with precedents in that quarter. The fact, however, that Mr. Bassett should have thought proper to take the responsibility of harboring the persons referred to, contrary to the wishes not only of his own Government, but to those also of that to which he is accredited, is not conceived to forfeit his right not only to protection from violence, but also to a continuance of those observances which are due to the diplomatic representative of a friendly nation. I regret to state, however, that, according to Mr. Bassett's reports to this Department, those observances have, in respect to him and to his legation, been signally disregarded. He states that his abode is encompassed by an armed force, and that during the night especially persons in his neighborhood keep shouting, apparently on purpose, to a degree which makes it impossible fer him or his family to obtain necessary rest. It cannot be believed that these annoyances are instigated by the Haytian Government, and perhaps it may not be aware that they are practiced. However this may be, it is expected that they will at once be discontinued. If this expectation should be disappointed, it will be regarded as an unfriendly proceeding on the part of the Haytian Government. Indeed, the demonstrations adverted to and all the circumstances make it advisable, in the opinion of the President, that a United States man-

of-war should visit Port au Prince. The Secretary of the Navy will consequently be requested to order one thither."

Mr. Cadwalader, Acting Sec. of State, to Mr. Preston, Aug. 6, 1875. MSS. Notes, Hayti; For. Rel., 1875.

"It is noticed that Mr. Preston has thought proper, in that communication, to characterize the sanctuary which the minister of the United States in Hayti has thought proper to extend to certain citizens of that country as an act performed pursuant to a *pretended* right. As similar acts have often been exercised by the representatives of other powers, as well as by that of the United States, with the acquiescence of Hayti, the epithet referred to may be considered as superfluous.

"The undersigned also regrets to notice a disposition on the part of Mr. Preston to draw an inference from the views which this Department has expressed on the general subject which will at least tend to restrict the course which the Department may think proper to adopt in regard to it. No such inference can be assented to.

"It is quite probable, however, that, when the present case shall have been satisfactorily adjusted, this Department may be disposed to receive and consider any proposition which Hayti may make, looking to the abolition, by the several Governments represented in that country, of the practice of granting an asylum to refugees in their respective legations. The United States cannot, for the present at least, separately, even by implication, engage to treat upon the subject.

"The undersigned also regrets to observe that Mr. Preston mistakes the terms upon which, as he was informed, Mr. Bassett had been authorized to surrender the refugees in his residence.

"The only condition upon which Mr. Bassett was authorized to make that surrender was, that the Haytian Government should stipulate not to punish the refugees, if, after trial, they should be convicted of any offense, but should, of its own accord, allow them to leave the country, and should furnish them with passports for that purpose. This condition did not imply any necessity for the exercise of the right of pardon, to which Mr. Preston refers in his note. Indeed, the proposition as stated by that gentleman, would, it is conceived, involve not only an abandonment of the question of asylum, but practically an assent to its violation.

"The United States cannot consent to this. The proposition authorized through Mr. Bassett was based upon the principle of deferring to the dignity of Hayti by acknowledging her right to try the refugees, but also of maintaining the inviolability of the asylum so long as it should generally be tolerated.

"If the proposition adverted to should, in its spirit and its terms, be accepted by Hayti, the unpleasant question to which it relates may be promptly and satisfactorily settled."

Mr. Cadwalader, Acting Sec. of State, to Mr. Preston, Aug. 17, 1875. MSS. Notes, Hayti; For. Rel., 1875.

"Your dispatches to No. 389 have been received. They convey the unwelcome information that the question in regard to Boisrond Canal and the other refugees at your residence was still unadjusted. The hope was entertained that the conditions upon which, by the instruction No. 227 of the 4th of June last, you were authorized to terminate the asylum which had been granted to those persons, would have been complied with. Those conditions were that if the Haytian Government should apply to you for them in order that they might be tried, you would be authorized to give them up, provided that Government would engage that no punishment should result from the trial, but that if convicted they should leave the country. Or if those persons should themselves, or through you, offer to surrender to the authorities on the same conditions, you were to dismiss them. It does not appear from your dispatches that that Government had made such an application, or that it had been made by you. This leaves the subject in a very unsatisfactory state, and one by no means tending to strengthen those friendly relations between the two Governments which it is desirable to maintain. The irritation of the Haytian Government in regard to the matter is shown in the recent notes of Mr. Preston, a copy of which (and of the answers of the Department) is inclosed. It is obviously the purpose of that Government, probably actuated by the impression that the right of asylum in the abstract is not favored by this Government, to endeavor to have you directed to surrender the refugees unconditionally. This purpose has not been and will not be accomplished. Still the impression here is strong that in receiving Mr. Boisrond Canal, especially under the circumstances, you allowed your partialities for that individual, as well as your general feelings of humanity, to overcome that discretion which, pursuant to the instruction to you, No. 32, of the 4th of February, 1870, you were expected to exercise in every case where an asylum might be granted to political refugees. The Department will not take into consideration the antecedents of Mr. Boisrond Canal. It is also bound to disregard the complaints of the existing Haytian Administration against him, or the reasons therefor. If, however, as is understood to be the case, that person had actually been tried and sentenced for conspiracy before he sought refuge in your abode, he must have gone thither to escape punishment and arrest. It is also understood that he and his companions, while on their way thither, resisted arrest by force of arms. These circumstances certainly present a case in which it would be unreasonable to expect that Government to acquiesce in the privilege of sanctuary granted by you to Boisrond Canal. Consequently that step on your part cannot be approved. Still there is no disposition to change the conditions upon which you have been authorized to surrender the refugees, except so far as this may be made necessary by the fact that Boisrond Canal had actually been tried and sentenced before he sought an asylum. It is presumed that if he were at large he would not be tried again, though the sentence already passed

might be carried into effect. If therefore that Government should allow him and the others to be embarked for a foreign port, under your supervision, the case might thereby be settled.

"It is presumed that the embarkation might take place by the connivance of the Government without any change of the sentence, or that, if necessary, the sentence might be repealed or so modified that the embarkation might be carried into effect without hazard or injury to the interests of the Government. That a proper disposition to this end should be entertained is much to be desired."

Mr. Hunter, Acting Sec. of State, to Mr. Bassett, Aug. 26, 1875. MSS. Inst., Hayti; For. Rel., 1875.

"The undersigned, Acting Secretary of State of the United States, has the honor to acknowledge the receipt of the note of Mr. Stephen Preston, envoy extraordinary and minister plenipotentiary of the Republic of Hayti, of the 26th of August last, relative to the asylum granted by Mr. Bassett, minister resident of the United States at Port au Prince, to certain refugees.

"The undersigned regrets that Mr. Preston does not deem himself warranted in recommending to his Government the acceptance of the proposition on this subject contained in Mr. Cadwalader's note to him of the 17th ultimo. That proposition was believed to have been as just to the rights of all parties as the circumstances, fairly considered, would justify. Mr. Preston urges as a principal objection that, by a decree of the President of Hayti, bearing date the 2d of May last, Boisrond Canal, one of the chief personages under the protection of Mr. Bassett, was declared an outlaw, and that he did not seek refuge with Mr. Bassett until the next day. The decree adverted to may, as Mr. Preston says, have been issued pursuant to the constitution of Hayti. It can scarcely, however, be regarded as the result of any other than a military trial; and this in the absence of the accused, if, indeed, any trial, even of that character took place.

"Mr. Preston offers, at the close of his note, a counter proposition as a substitute for that of Mr. Cadwalader. It is, that if Boisrond Canal and the other refugees to be given up to the proper Haytian authorities, the Government of Hayti will commute the penalty denounced by the decree of the 2d May last, to simple banishment; and that the refugees might then at once be embarked.

"The undersigned is not sure that he fully understands this proposition of Mr. Preston. If, however, it be in substance that if the refugees be given up the Haytian Government will engage that they shall be subjected to no further trial or sentence, but that the President of Hayti will grant them amnesty, and will allow them to embark without molestation, on a stipulation or understanding that they are not to return to Hayti without permission, and that, if they do so return, they may be held for trial and punishment, Mr. Bassett will at once be in-

structed to this effect. It is hoped, therefore, that this interpretation of Mr. Preston's offer may be found correct; that he will commend it to his Government; that it will be accepted, and that this unpleasant question may thus be settled to the satisfaction of the parties without weakening the good understanding which it is believed to be their interest to maintain."

Mr. Hunter, Acting Sec. of State, to Mr. Preston, Sept. 10, 1875. MSS. Notes, Hayti; For. Rel., 1675.

"The undersigned, Secretary of State of the United States, has the honor to acknowledge the receipt of the note of Mr. Preston, envoy extraordinary and minister plenipotentiary of the Republic of Hayti, of this date. It relates to the political refugees who, for some time past, have been in the residence of Mr. Bassett, the minister resident of the United States at Port au Prince.

"It is to be regretted that the embarrassing question which has arisen upon the subject should not have been sooner adjusted to the mutual satisfaction of the parties.

"The undersigned is, however, under the impression that the terms of adjustment offered in Mr. Preston's note may be regarded as acceptable. Mr. Bassett will be instructed accordingly, and the Navy Department will be apprised that at present there is no further occasion for a man-of-war to visit Hayti."

Mr. Fish, Sec. of State, to Mr. Preston, Sept. 27, 1875. MSS. Notes, Hayti; For. Rel., 1875.

It is mutually agreed between Hamilton Fish, Secretary of State, and Stephen Preston, envoy extraordinary and minister plenipotentiary of Hayti, that certain political refugees who, for some time past, have had an asylum in the residence of Mr. Bassett, the minister resident of the United States at Port au Prince, shall receive from the Haytian Government a full amnesty for all offenses up to the time of their departure from the island; that Mr. Bassett shall give them up; that they shall be placed on board a vessel bound to some other country; that on their way to the vessel they shall be escorted by a Haytian military force, and that Mr. Bassett may also accompany them to the vessel. It is to be understood, however, that the said refugees, or any of them, shall not return to Hayti without the permission of the Government of that Republic.

HAMILTON FISH,
Secretary of State.
STEPHEN PRESTON,
Envoy Extraordinary and Minister Plenipotentiary d'Hayti.

Agreement signed September 27, 1875; For. Rel., 1875.

"The right of asylum, by which I now refer to the so-called right of a political refugee to immunity and protection within a foreign legation or consulate, is believed to have no good reason for its continuance, to be mischievous in its tendencies, and to tend to political disorder.

"These views have been frequently expressed, and, while this Government is not able of itself to do away with the practice in foreign

countries, it has not failed, on appropriate occasion, to deprecate its existence and to instruct its representatives to avoid committing this Government thereto.

"Upon a recent occasion, occurring in the island of Hayti, where, as represented to this Department, the asylum was forced upon the minister, the Department found it necessary to give a renewed and emphatic expression to these views.

"Such being the case, it is deemed fortunate that Mr. Castro was not compelled to avail himself of the offer you had made."

Mr. Fish, Sec. of State, to Mr. Cushing, Oct. 1, 1875. MSS. Inst., Spain.

"The frequency of resort in Spain to the legations for refuge, and the fact mentioned by you that nobody there disputes the claim of asylum, but that it has become, as it were, the common law of the land, may be accounted for by the prevalence of 'conspiracy as a means of changing a cabinet or a government,' and the continued tolerance of the usage is an encouragement of this tendency to conspiracy.

"It is an annoyance and embarrassment, probably, to the ministers whose legations are thus used, but certainly to the Governments of those ministers, and, as facilitating and encouraging chronic conspiracy and rebellion, it is wrong to the Government and to the people where it is practiced—a wrong to the people, even though the ministry of the time may not remonstrate, looking to the possibility of finding a convenient shelter when their own day of reckoning and of flight may come."

Mr. Fish, Sec. of State, to Mr. Cushing, Oct. 5, 1875. MSS. Inst., Spain.

"The right to grant asylum to fugitives is one of the still open questions of public law. The practice, however, has been to tolerate the exercise of that right, not only in American countries of Spanish origin, but in Spain itself, as well as in Hayti. This practice, however, has never addressed itself to the full favor of this Government. In withholding approval of it, we have been actuated by respect for consistency.

"It is not probable that the practice would ever be attempted in this country, or, if attempted, could be tolerated, and the discountenance which the United States extends to the practice is upon the principle of doing to others as we would they should do unto us, so that when we acknowledge the sovereignty of a foreign state by concluding treaties with and by accrediting diplomatic officers to its Government, we impliedly, at least, acknowledge it as a political equal, and we claim to extend to all the political prerogatives and immunities which we may claim for ourselves.

"We sincerely desire that it may be universally recognized that foreign legations shall nowhere be made a harbor for persons either charged with crimes or who may fear that such a charge may be made.

"Prominent among the reasons for objection on our part to giving asylum in a legation, especially in the Governments to the south of us,

is that such a practice obviously tends to the encouragement of offenses for which asylum may be desired.

"There is cause to believe that the instability of the Governments in countries where the practice has been tolerated may in a great degree be imputed to such toleration. For this reason, if for none other, the Government of the United States, which is one of law and order and of constitutional observance, desires to extend no encouragement to a practice which it believes to be calculated to promote and encourage revolutionary movements and ambitious plottings.

"Instances, too, have occurred where asylum, having been granted with impunity, has been grossly abused to the defeat of justice, not only against political offenders, but also against persons charged with infamous crimes. Such abuses are plainly incompatible with the stability and welfare of Governments, and of society itself.

"Temptations sufficient to lead to an abuse of the practice cannot fail to abound in most persons who may exercise it. Such temptations are incident to human nature, and in countries where political revolutions are of frequent occurrence one must be gifted with uncommon self-denial to be wholly free from their influences.

"It is believed, however, to be sound policy not to expose a minister in a foreign country to the embarrassments attendant upon the practice. Still, this Government is not, by itself, and independently of all others, disposed to absolutely prohibit its diplomatic representatives abroad from granting asylum in every case in which application therefor may be made.

"We do not, however, withhold from them our views of the practice, and will expect that, if they do exercise the prerogative, it will be done under their own responsibility to their own Government. We would prefer, therefore, not formally to assent to the propositions contained in the memorandum above referred to without ascertaining the views of the other Governments concerned in regard to them.

"Some, at least, of those propositions appear to be fair enough; but as the circumstances of cases in which asylum may be granted greatly vary, it would, in the opinion of the undersigned, be preferable, until an understanding and an approach to accord of views as to the future practice in this regard can be had by the other powers, that every such case should be treated according to its merits, rather than that we should be fettered in advance by rules which may be found not to be practically applicable or useful."

Mr. Fish, Sec. of State, to Mr. Preston, Dec. 11, 1875. MSS. Notes, Hayti; For. Rel., 1876.

The fact that a fugitive slave in Tangier takes refuge in the house of an American citizen in that place does not entitle him as a right to make any claim on the Government of the United States for protection.

Mr. Evarts, Sec. of State, to Mr. Mathews, Mar. 15, 1877. MSS. Inst., Barb. St.

"It is desired that one of your first official acts, after the presentation of your credentials as minister at Madrid, shall be to notify the minister of state of His Majesty that you are authorized, on behalf of the United States, to take part in a friendly conference of foreign representatives which it is proposed to hold at Madrid for the purpose of discussing the question of the protection extended to native Moors in Morocco by the diplomatic and consular agents of foreign states resident in that country.

"In order that you may understandingly take part in that projected conference, and appreciate with as much exactness as possible the nature of the questions to be brought up before it, it will be necessary to give you a brief résumé of the facts so far as they appear in the correspondence of this Department, with transcripts of the pertinent papers.

"On the 14th of June, 1877, Mr. Plunkett, the British chargé d'affaires in Washington, addressed the Department, inclosing a printed extract from a dispatch from the British minister at Tangier to the Earl of Derby, with a memorandum of what took place at the meeting of the foreign representatives at the house of the Moorish minister for foreign affairs on the 10th of March, 1877. The dispatch of Sir J. H. Drummond Hay, thus referred to, contains various allegations as to the abuses which have grown up from the practice of giving protection to Moorish subjects by foreign diplomatic and consular officers, particularly by exempting them from the payment of taxes. It was therein stated that the evil is a growing one, 'more especially on the part of those foreign officers who represent countries which have no trade and hardly any residents in Morocco belonging to their respective nationalities.' The several representatives who took part in that meeting discussed this question and seem to have admitted the existence of the evil and deprecated the practice. * * *

"The matter, however, speedily passed beyond this stage, and its next phase was a series of meetings held at Tangier, by the foreign representatives resident there, for the discussion of various points of administration and foreign intercourse, among them the question of irregular foreign protection. The details of these conferences were communicated to the Department by Mr. Mathews, in his No. 258, of November 9, 1877, with full copies of the *procès-verbal* of the meetings, and information of these proceedings was likewise received from the British chargé d'affaires here, under date of October 8, 1877, with accompanying copies of the correspondence of Sir J. H. Drummond Hay, and extracts of the pertinent portions of the *procès-verbal*. I have to refer you to these several papers, herewith transmitted in copy, an attentive perusal of which will acquaint you with all the facts in relation thereto in the possession of the Department, merely citing for your present information, in connection with this instruction, the language used by Sir J. H. Drummond Hay with reference to the action of Mr. Mathews. He says:

"'The United States consul-general presented lists of thirty-seven

persons protected throughout the Empire. On observing that he protected ten native Jews as agents at Tangier, four at Meknas, three at Fas, and two at Alcassar, I said that it appeared strange that the United States consul should find it necessary to place these persons on the list of protected natives, when the trade of the United States with Morocco was almost *nil*, whereas Great Britain, which had two-thirds of the trade of the Empire, did not protect a single native at any one of these towns.

"'Colonel Mathews declared that Cid Mohammed Bargash had frequently stated to him that he gave no trouble to the Moorish Government by these protections.

"'I have to remark that I did not find the list presented by the United States consul-general to his colleagues corresponded with that delivered by him to the local authorities.'

"It appears from the reports of the proceedings then had, that, although the greater part of the demands put forward by the Moorish Government were agreed to, yet some important questions were left undecided on account of the objections made by several of the powers—France, Italy, Portugal, and Brazil.

"Under instructions from his Government the British minister at this capital brought this circumstance to the attention of this Government on the 4th of November last, stating that it was thought that a continuance of the discussion was not likely to further an agreement upon the questions left undecided, and that unless the Governments concerned were disposed to send positive instructions to their agents of a nature to satisfy the Moorish Government, the best prospect of a solution lay in a reference of the question to a commission or meeting of representatives at some foreign court in which the Moorish Government may be represented by a delegate or delegates deputed for the purpose, and suggesting the choice of Madrid for such a meeting. This course was represented as enabling, among other benefits, the removal of the discussion from the hands of those who have hitherto conducted it, and avoiding any difficulties which may have arisen from personal feelings or opinions, in which view I fully coincide.

"It now appears from a telegraphic dispatch yesterday received from Mr. Reed, that the Spanish Government has taken the initiative in bringing about the conference suggested, and looks to the proper representation of this Government thereat.

"It is, in many respects, desirable that we should be competently represented at such a conference, and you have accordingly been designated for the purpose. * * *

"It is sincerely hoped that the anticipation of Lord Salisbury, conveyed in Sir Edward Thornton's note of November 4, 1879, may be well founded, and that the discussion may proceed without any of the personal feeling which seems unhappily to have characterized its progress

at Tangier hitherto. In principle, this Government is cordially in favor of the adoption by common consent of an equitable rule which may do away with the excessive and injurious exercise of the prerogative of foreign protection of natives which has grown up under the shadow of treaty stipulations and native usage, and which is represented as burdensome to the Moorish exchequer and unjust to its Government, but in reaching a due settlement regard must be had to the proper maintenance and security of consular establishments in that country and the necessary employment of natives as guards, interpreters, and servants, and in such capacities as may be essential to the proper representation and protection of foreign commercial interests. This Government could not, however, see with complacent indifference any proceedings on the part of the proposed conference looking to an investigation of the past conduct of foreign representatives at Tangier, and sitting in *ex parte* judgment on their motives and morality. * * *

"You will make full and prompt report to the Department of the proceedings of the conference, transmitting the *procès-verbal*, and seeking, in your dispatches thereon, to elucidate for the better information of the Department, the points which may arise in the discussion.

"It is not understood from the invitation of the Spanish Government whether a formal full power will be needed by you. One is, however, transmitted herewith, in case you should find that your colleagues are required to present other credentials than those of their respective offices."

Mr. Evarts, Sec. of State, to Mr. Fairchild, Mar. 12, 1880. MSS. Inst., Spain; For. Rel., 1880.

"The views of this Government as to the right of asylum have long been well known. You will find them in the correspondence of this Department with your predecessor, Mr. Bassett. This Government is well aware that the practice of extraterritorial asylum in Hayti has become so deeply established as to be practically recognized by whatever Government may be in power, even to respecting the premises of a consulate, as well as a legation. This Government does not sanction the usage, and enjoins upon its representatives in Hayti the avoidance of all pretexts for its exercise. While indisposed from obvious motives of common humanity to direct its agents to deny temporary shelter to any unfortunates threatened with mob violence, it is proper to instruct them that it will not countenance them in any attempt to knowingly harbor offenders against the laws from the pursuit of the legitimate agents of justice."

Mr. Frelinghuysen, Sec. of State, to Mr. Langston, Dec. 15, 1883. MSS. Inst., Hayti.

"It appears that the correspondence between yourself and the Colombian foreign office arose from the refusal of a certain Señor Uribe, a wealthy Colombian citizen, to pay his war contributions, which led to an order for his arrest, and then to his being rescued and concealed by the minister of the Argentine Republic under the assumed right of asylum of his legation. This right the Colombian authorities appear to have respected; but the minister of foreign affairs addressed a circular note, a copy of which you inclose, to the representatives of foreign powers, protesting against the right of asylum of foreign legations for the enemies of the Republic, and intimating that, in spite of past toleration of it, the Government might feel itself under the necessity of claiming the surrender of individuals who had taken refuge in the residences of ministers, and 'of whom the legitimate authority may for any motive whatever be in search.'

"In reply to this you inform the minister of foreign affairs, as you state, 'upon your own responsibility before having had the opportunity to refer it to your Government,' that a public minister 'is entitled to all the privileges annexed by the law of nations to his public character, and among these entire and absolute exemption from local jurisdiction; also that civil and criminal jurisdiction over those attached to his legation rests with the minister exclusively, to be exercised by him according to the laws, regulations, and instructions of his own Government, and above all that his house cannot be invaded by order of either the civil or military authorities of the local Government, no matter how apparent the necessity therefor.'

"These remarks at any time would require to be materially qualified, and you will see by the inclosed extract from the new diplomatic instructions, a complete copy of which will soon be sent you, what the views of this Department are as regards the so-called extraterritorial questions for the guidance of our diplomatic representatives abroad. It is generally safer when a minister receives such a communication as Señor Restrepo addressed to you not to make it the occasion of arguments or of statements which might be construed as committing the Government, but to acknowledge it and refer it home for instructions.

"As regards the right of asylum, which was the immediate occasion of the correspondence in question, the new instructions do not permit it for persons outside of the agent's diplomatic or personal household.

"The works on international law do not sustain the unqualified right of asylum, and the Spanish law forbids it altogether. There are several cases cited in the law books where the necessity of claiming the surrender of individuals who have taken refuge in a minister's residence has been enforced and admitted by other nations.

"In 1726 the Duke of Ripperda, minister of Philip II, took refuge in the hotel of the British embassador at Madrid, but under the opinion of the council of Castile was taken by force from the embassador's hotel,

and Great Britain did not claim the right of her embassador to retain the refugee."

Mr. Bayard, Sec. of State, to Mr. Scruggs, June 16, 1885. MSS. Inst., Colombia; For. Rel., 1885.

"The Government of the United States does not *claim* for its legations abroad any extraterritorial privileges of asylum, and consequently makes no such *claim* in respect of consular offices or private residences of American citizens, or American merchant vessels in port. If, as a custom, in any country, the practice of asylum prevails, and is tacitly or explicitly recognized by the local authorities in respect of legations, consulates, private dwellings, or vessels of another nationality, the exercise of the consuetudinary privilege by Americans could not be deemed exceptional, and if, under any circumstances, refugees find their way to places of shelter under the American flag, or in the domicil of American citizens, we should certainly expect such privileges as would be accorded were the like shelter under the flag or domicil of another power. But we claim no right or privilege of asylum; on the contrary, we discountenance it, especially when it may tend to obstruct the direct operation of law and justice."

Mr. Bayard, Sec. of State, to Mr. Thompson, Nov. 7, 1885. MSS. Inst., Hayti. For. Rel., 1886.

"This privilege (of asylum, see *supra*, §§ 90–96), however, does not embrace the right of asylum for persons outside of the agent's diplomatic or personal household.

"In some countries, where frequent insurrections occur and consequent instability of government exists, the practice of extraterritorial asylum has become so firmly established, that it is often invoked by unsuccessful insurgents, and is practically recognized by the local Government to the extent even of respecting the premises of a consulate in which such fugitives may take refuge. This Government does not sanction the usage, and enjoins upon its representatives in such countries the avoidance of all pretexts for its exercise. While indisposed to direct its agents to deny temporary shelter to any person whose life may be threatened by mob violence, it deems it proper to instruct its representatives that it will not countenance them in any attempt to knowingly harbor offenders against the laws from the pursuit of the legitimate agents of justice.

"The liberty of worship is very generally conceded to foreign legations in countries which maintain a religious establishment different from that of the diplomatic agent's country. If any diplomatic agent should assert the right of worship, within his legation, for himself and those of his fellow-countrymen who profess the same faith as he does, he would be upheld, within the limits of the like privilege conceded in the country of his sojourn to other foreign legations.

"The powers and duties of diplomatic officers in regard to their fellow-citizens depend in a great measure upon the municipal law of the United States. No civil jurisdiction can be exercised by them over their countrymen without express authority of law, or treaty stipulation with the state in which they reside, and no criminal jurisdiction is permitted to them in Christian states. They are particularly cautioned not to enter into any contentions that can be avoided, either with their

countrymen or with the subjects or authorities of the country. They should use every endeavor to settle in an amicable manner all disputes in which their countrymen may be concerned, but they should take no part in litigation between citizens. They should countenance and protect them before the authorities of the country in all cases in which they may be injured or oppressed, but their efforts should not be extended to those who have been willfully guilty of an infraction of the local laws. It is their duty to endeavor, on all occasions, to maintain and promote all rightful interests, and to protect all privileges that are provided for by treaty or are conceded by usage. If representations made to the authorities of the country fail to secure proper redress, the case should be reported to the Department of State."

Printed Pers. Inst., Dip. Agents, 1885.

The house of a foreign minister cannot, be made an asylum for a guilty citizen, nor, it is apprehended, a prison for an innocent one. And, though it be exempt from the ordinary jurisdiction of the country, yet, in such cases, recourse would be had to the interposition of the extraordinary power of the state.

1 Op., 47 Bradford, 1794.

As to privileges of minister's home, see *supra*, § 96.

The general approval by the South American Governments, and by those of San Domingo and of Hayti, of the asylum given by foreign consuls and diplomatic agents to heads of governments suddenly deposed by mobs, may be explained on the ground that otherwise the lives of experienced statesmen would be so precarious in those countries as to expose government permanency to risks even greater than those to which it is there at present exposed.

As to asylum in Turkey, see App., Vol. III, § 68*a*.

XXIX. *MAY EXTEND PROTECTION TO CITIZENS OF FRIENDLY COUNTRIES.*

§ 105.

The authority given by this Government to its diplomatic and consular agencies to extend protection to Swiss citizens in places where there is no Swiss consul, leaves the extension of such protection a matter of discretion in the officer appealed to.

Mr. Fish, Sec. of State, to Mr. Cubisol, June 27, 1876. MSS. Inst., Barb. Powers. See Mr. Fish to Mr. Heap, Oct. 12, 1877, *ibid.*; Dec. 11, 1877, *ibid.*

"In cases of revolution the duties of a minister are not confined to the protection of his own countrymen, but extend to the citizens and subjects of all friendly nations left by the political events without a representative. The government of Miramon having, in 1859, revoked the exequatur of the American consul at Mexico, because the United States had recognized President Juarez, he asked the interposition of the British minister for protection from the *de facto* authorities for the persons and property of Americans. This protection having been withheld, Mr. Cass, in instructing Mr. Dallas, May 12, 1859, to bring to the notice of the British Government the course of its minister, says: 'In countries in a state of revolution and during periods of public ex-

citement it is the practice of modern times for the foreign representatives residing there to interpose by the exertion of their influence for the protection of the citizens of friendly powers exposed to injury and danger, and left without any minister of their own country to watch over them. The President would not hesitate to visit with marks of his displeasure any American minister who should have it in his power to afford protection to the persons or property of citizens of a friendly nation placed in peril by revolutionary commotions, and having no national representative to appeal to, should he fail to exert his influence in their behalf.'"

Lawrence's Wheaton (ed. 1863), 373, 374.

"Soon after the existing war broke out in Europe, the protection of the United States minister in Paris was invoked in favor of North Germans domiciled in French territory. Instructions were issued to grant the protection. This has been followed by an extension of American protection to citizens of Saxony, Hesse, and Saxe-Coburg, Gotha, Colombia, Portugal, Uruguay, the Dominican Republic, Ecuador, Chili, Paraguay, and Venezuela, in Paris. The charge was an onerous one, requiring constant and severe labor, as well as the exercise of patience, prudence, and good judgment. It has been performed to the entire satisfaction of this Government, and, as I am officially informed, equally so to the satisfaction of the Government of North Germany."

President Grant, Second Annual Message. 1870.

For details of aid rendered through Mr. Washburne, minister of the United States in Paris, to Germans in Paris in August, 1870, see Mr. Washburne to Mr. Fish, Aug. 15 and Aug. 22, 1870, and other papers forwarded with President Hayes' message of Feb. 6, 1878.

"I was glad to know that the Department coincided with Mr. Bancroft and myself in the opinion that all these expenses (those for the relief of Germans in Paris during the siege) should be paid by the United States. It would certainly have been unworthy of a great Government like ours to permit itself to be paid for hospitalities extended to the subjects of other nations for whom our protection had been sought."

Mr. Washburne, minister at Paris, to Mr. Fish, Nov. 18, 1870. MSS. Dispatches, France. Documents attached to President Hayes' message of Feb. 6, 1878.

"You are aware that Monseigneur Darboy, the archbishop of Paris, was seized some time since, by order of the Commune, and thrust into prison to be held as a hostage. Such treatment of that most devout and excellent man could have but created a great sensation, particularly in the Catholic world. On Thursday night last I received a letter from Monseigneur Chigi, archbishop of Myre and apostolic nuncio of the Holy See, and also a communication from Mr. Louoner, canon of the diocese of Paris; Mr. Lagarde, the vicar-general of Paris, and Messrs. Bourset and Allain, canons and members of the metropolitan chapter of the church of Paris, all making a strong appeal to me, in the name of the right of nations, humanity, and sympathy, to interpose my good offices in behalf of the imprisoned archbishop. I have thought that I should have been only conforming to what I believed to be the policy of our Government, and carrying out what I conceived to be your wishes

under the circumstances, by complying with the request of the gentlemen who have addressed me. I, therefore, early this morning put myself in communication with General Cluseret, who seems, at the present time, to be the directing man in affairs here. I told him that I applied to him not in my diplomatic capacity, but simply in the interest of good feeling and humanity, to see if it were not possible to have the archbishop relieved from arrest and confinement. He answered that it was not a matter within his jurisdiction, and however much he would like to see the archbishop released, he thought, in consideration of the state of affairs, it would be impossible. He said that he was not arrested for crime, but simply to be held as a hostage, as many others had been. Under the existing circumstances he thought it would be useless to take any steps in that direction. I, myself, thought the Commune would not dare, in the present excited state of public feeling in Paris, to release the archbishop. I told General Cluseret, however, that I must see him to ascertain his real situation, the condition of his health, and whether he was in want of anything. He said there would be no objection to that, and he immediately went with me, in person, to see the procureur of the Commune; and upon his application I received from the prefect a permission to visit the archbishop freely at any time. In company with my private secretary, Mr. McKean, I then went to the Mazas prison, where I was admitted without difficulty, and being ushered into one of the vacant cells the archbishop was very soon brought in. I must say that I was deeply touched at the appearance of this venerable man. With his slender person, his form somewhat bent, his long beard, for he has not been shaved apparently since his confinement, his face haggard with ill-health, all could not have failed to have moved the most indifferent. I told him I had taken great pleasure, at the instance of his friends, in intervening on his behalf, and while I could not promise myself the satisfaction of seeing him released, I was very glad to be able to visit him to ascertain his wants, and to assuage the cruel position in which he found himself. He thanked me most heartily and cordially for the disposition I had manifested toward him. I was charmed by his cheerful spirit and his interesting conversation. He seemed to appreciate his critical situation, and to be prepared for the worst. He had no word of bitterness or reproach for his persecutors, but on the other hand remarked that the world judged them to be worse than they really were. He was patiently awaiting the logic of events and praying that Providence might find a solution to these terrible troubles without the further shedding of human blood."

Mr. Washburne, minister at Paris, to Mr. Fish, Apr. 23, 1871. MSS. Dispatches, France. Doc. accompanying President Hayes' message of Feb. 6, 1878.

"He was taken from this cell a little before 8 o'clock on Wednesday evening, the 24th ultimo. The curé of the Madeleine, the Abbé Deguerry, the Senator Bonjeau, and three other distinguished hostages were taken from their cells in the same prison at the same time, into the court of the building, and all were placed against the wall, which incloses the somber edifice of La Roquette. The archbishop was placed at the head of the line, and the fiends who murdered him with their knives had scratched a cross upon a stone in the wall at the very place where his head must have touched at the moment when the fatal shots were fired. He did not fall at the first volley, but stood erect, calm, and immovable. Before the other discharges came which launched him into eternity he crossed himself three times upon his forehead. The

other victims fell together. The marks of the bullets, made upon the wall as they passed through their bodies, were distinctly visible. The archbishop's body was afterward mutilated, his abdomen being cut open. All the bodies were then put into a cart and removed to Père la Chaise, which is but a few squares off, where they were thrown into the common ditch, from which they were happily rescued before decomposition had entirely taken place. Returning from La Roquette, I came by the 'Archevîché,' where the body of the archbishop was lying in state. He was so changed that I should scarcely have known him. Thousands and thousands of the people of Paris were passing through the palace to look for the last time upon him who was so endeared to them by his benevolent acts, his kindly disposition, and his love of the poor and the lowly. In all of the six or seven interviews I had with the archbishop in the prison, except the last, I always found him cheerful, and sometimes even gay, and never uttering one word of complaint. No man could be with him without being captivated by his cheerful and Christian spirit and enlightened conversation. The archbishop was learned, accomplished, and eloquent, and was a most liberal man in his religious and political sentiments. He met his fate with the firmness of a Christian martyr, and all generous hearts will join in a tribute of mourning."

Same to same, May 31, 1871; *ibid.*

That a consul cannot use his position to become a means of communication with an enemy of the country to which he is accredited, see *infra*, § 119.

XXX. *AVOIDANCE OF POLITICAL INTERFERENCE ENJOINED.*

§ 106.

The alleged course of Mr. Gouverneur Morris, when in France, in rendering advice and support to the reactionary party, was the cause of much embarrassment to President Washington.

"He [the President] said he considered the extracts from Ternant very serious, in short, as decisive; that he saw that Gouverneur Morris could no longer be continued there consistent with the public good; that the moment was critical in our favor, and ought not to be lost; that he was extremely at a loss what arrangement to make. I asked him whether Gouverneur Morris and Pinckney might not change places. He said that would be a sort of remedy, but not a radical one. That if the French ministry conceived Gouverneur Morris to be hostile to them; if they would be jealous merely on his proposing to visit London, they would never be satisfied with us at placing him at London permanently."

Conversation between Mr. Jefferson, Sec. of State, and President Washington, Feb. 20, 1793. 2 Randall's Life of Jefferson, 116. See further, for criticisms on Morris's course, 1 John Adams' Works, 500; 3 *ibid.*, 219, 320; 9 *ibid.* 307.

As to embarrassments arising from Mr. Gouverneur Morris' active participation when abroad in European politics, see Mr. Vaughan, in Monroe MSS., Mem. of 1826. MSS. Dept. of State.

For Gouverneur Morris' correspondence in Paris, in 1792–'93, see 1 Am. St. Pap. (For. Rel.), 312, 329.

Mr. Monroe's course as minister to Paris in 1794 was severely criticised at the time by the Federalists on the ground that it was unduly conciliatory to France. See, as to Mr. Monroe's course in other respects, *infra*, §§ 107, 150*b*; *supra*, § 85. We must remember, however, that Mr. Monroe's instructions, which were drawn by Mr. Randolph, as Secretary of State, required him to take every step to conciliate the revo-

lutionary authorities who were at the time the *de facto* Government of France, and that his generous sympathies with that movement were well known at the time of his appointment. In no point in this respect did Mr. Monroe outstep Lafayette; and of Lafayette's course General Washington wrote letter after letter of approval. General Washington at that period of his administration sought to balance parties among his diplomatic agents in the same way that he sought to balance parties in his Cabinet. Such being the case, nothing was more natural than that he should have sent to France Mr. Monroe, whose attachment to Lafayette and to the new movements in France was well known, while Mr. Jay, whose French Huguenot descent gave him a peculiar dislike to France, while his conservatism led him to cling with reverence to the English constitution, was sent to England. It should also be remembered that, as the records of the Department show, Mr. Pickering, who succeeded Mr. Randolph as Secretary, left Mr. Monroe, during the most critical period of his mission, without instructions. It was natural that Mr. Monroe should have felt that he was thus left to his own judgment; and there is no doubt that his judgment, affected as it naturally was by his enthusiastic belief that the French revolutionary movement tended not merely to liberty but to safe government, was that he should return with ardor the ardent welcome with which he was received. Nor even in his address to the French convention, which was at the time so much blamed for the exuberant friendliness with which it abounded, do we find anything in the way of conciliation that had not the example of General Washington (*supra*, § 47*a*), and has not been at least equaled by our ministers in England in more recent days. Nor can Mr. Monroe be justly charged with any deep-seated prejudices against England which disabled him from acting fairly as a negotiator with France. Not more than six years after his mission to France he was sent by Mr. Jefferson to negotiate, in connection with Mr. Pinkney, a treaty with England; and the treaty which they agreed on was held back from the Senate by Mr. Jefferson on the ground that the concessions it made were too liberal. (*Infra*, §§ 107, 150*b*.) Even after the war of 1812, when the burning of Washington by the British was, to say the least, not calculated to increase the kindly feelings of Mr. Madison's Cabinet to Great Britain, we find Mr. Monroe, as Secretary of State, and afterwards as President, pursuing towards Great Britain a course whose moderation and courtesy no one questioned; and, as appears by his papers on file in the Department of State, he was careful to insist on examining the documents sent to England by Mr. J. Q. Adams, as Secretary of State, for the purpose of striking from them acerbities in which Mr. Adams was supposed to have a tendency to indulge in that particular correspondence. It would be difficult, taking Mr. Monroe's whole history in consideration, to fasten on anything in his conduct in Paris in 1794 which is inconsistent with his duties as the minister of a neutral power.

Mr. Monroe's address to the French Directory on Dec. 30, 1796, on presenting his letter of recall, with the reply of the Directory, are given in full in 1 Am. St. Pap. (For. Rel.), 747, and is noticed *supra*, § 85.

Mr. Monroe's letter to the Secretary of State, of Sept. 10, 1795, in reply to the censures of his course by the Department, is given in full in 1 Am. St. Pap. (For. Rel.), 742.

As to the embarrassments of the mission of the United States in France in 1798, consequent on the attempts of Talleyrand to discriminate between the ministers on the basis of their party relations, see 2 Life of Gerry, 190, *ff*. *Infra*, § 148, *ff*.

As to Genet's interference in politics, see *supra*, §§ 79, 84.

In 1804 Yrujo, minister from Spain, was charged with the attempt to purchase the insertion in a newspaper in Philadelphia of an article defending the position of Spain and criticising the administration. He replied that such an act was not unusual in diplomacy, that there was no attempt to interfere with the domestic affairs of the United States, that it was simply issuing a document expository of the views of his Government. This not being regarded as an adequate defense, keeping the character of the article in view, his recall was asked for. Yrujo, however, declined to leave his post, and used offensive language towards the United States. (See *supra*, § 84.) Mr. J. Q. Adams, upon this action, introduced into the Senate a bill giving the President authority to order foreign ministers to leave the country at his discretion; a measure, however, which was not pressed to a vote.

Explanations of the request for Yrujo's recall, based on his interference with politics in Philadelphia, as well as his insulting tone to the Government, are found in instructions by Mr. Madison to Mr. Pinckney of April 10, 1804, and by Mr. Madison to Mr. Monroe of May 23, 1805. On January 20, 1807, Mr. Madison informed Mr. Erving that unless Yrujo should leave the country extreme measures would be necessary to remove him; and a statement was inclosed (which, however, cannot now be found) giving the details of his misconduct. On May 1, 1807, Mr. Madison informed Mr. Erving that Yrujo had announced his departure, but had made no preparations to leave; and on October 18, 1807, his continued stay, with its incidents of annoyance to the administration, is announced by Mr. Madison to Mr. Erving, though it is mentioned that Foronda was then received as chargé d'affaires. No note of Yrujo later than February 6, 1806, is on file in the Department. (As to Yrujo, see further §§ 84, 94, 107.)

As to Cobbett's attack on Yrujo see Whart. St. Tr., 322.

"There is reason to believe that Yrujo (the Spanish minister) has worked against us with all his might, seeking to advance himself by flattering the prejudices of his Government, instead of consulting its obligations or its true interest. He behaved so badly as to require the recall signified in my public letter. (Charles) Pinckney's recall has been asked by the Spanish Government, and a letter of leave goes to him."

Mr. Madison, Sec. of State, to Mr. Monroe (confidential), Nov. 9, 1804. 2 Madison's Writings, 209.

The intercepted letter of Mr. Onis, Spanish minister, on political parties in the United States, dated Jan., 1811, is given in 3 Am. St. Pap. (For. Rel.), 404.

Mr. Van Buren's message of Feb., 1838, containing a translation of a pamphlet published in Spanish by Mr. Gorostiza, previously minister from Mexico to the United States, before his departure from the United States, with correspondence relative thereto, is given in House Ex. Doc. No. 190, 25th Cong., 2d sess.

"The plain duty of the diplomatic agents of the United States is scrupulously to abstain from interfering in the domestic politics of the countries where they reside. This duty is specially incumbent on those who are accredited to Governments mutable in form and in the persons by whom they are administered. By taking any open part in the domestic affairs of such a foreign country they must, sooner or later,

render themselves obnoxious to the Executive authority, which cannot fail to impair their usefulness."

Mr. Buchanan, Sec. of State, to Mr. Shields, Aug. 7, 1848. MSS. Inst., Venez.

The duty of diplomatic representatives of the United States in foreign countries in times of insurrection, is scrupulously to avoid interference in the struggle, and to refuse to acknowledge insurgent authorities until permanently established.

Mr. Marcy, Sec. of State, to Mr. Wheeler, Nov. 8, 1855. MSS. Inst., Am. St.

Mr. Seward's report of Dec. 29, 1862, on the "alleged interference of our minister to Mexico in favor of the French," is given in House Ex. Doc. No. 23, 37th Cong., 3d sess.

"One of the essential qualifications of a diplomatic agent is to observe at all times a proper reserve in regard to the affairs of his Government; and the knowledge of these affairs, possessed by persons belonging to the legation, must be regarded as confidential.

"It is forbidden to diplomatic agents abroad to participate in any manner in the political concerns of the country of their residence; and they are directed especially to refrain from public expression of opinions upon local, political, or other questions arising within their jurisdiction.

"It is deemed advisable to extend a similar prohibition against public addresses, except upon exceptional festal occasions in the country of official residence. Even upon such occasions the utmost caution must be observed in touching upon political matters.

"The statute further forbids diplomatic and consular officers from recommending any person at home or abroad for any employment of trust or profit under the Governments to which they are accredited. This prohibition against recommendation for office is hereby extended to offices under the United States; it does not, however, prevent a diplomatic agent from recommending any person whom he may deem suitable and competent to fill a subordinate office in or under his own mission."

Printed Pers. Inst., Dip. Agents, 1885.

As to protection by consuls, see *infra*, § 122.

XXXI. *COURTESY, FAIRNESS, AND SOCIAL CONFORMITY EXPECTED.*

(1) OFFICIAL INTERCOURSE.

§ 107.

"Etiquette, when it becomes too glaring by affectation, imposes no longer either upon the populace or upon the courtiers, but becomes ridiculous to all. This will soon be the case everywhere with respect to American ministers. To see a minister of such a state as ——— and ——— assume a distant and mysterious air towards a minister of the United States, because his court has not yet acknowledged their independence, when his nation is not half equal to America in any one attribute of sovereignty, is a spectacle of ridicule to any man who sees it.

"I have had the honor of making and receiving visits in a private character from the Spanish minister here, whose behavior has been

polite enough. He was pleased to make me some very high compliments upon our success here, which he considers as the most important and decisive stroke which could have been struck in Europe."

Mr. J. Adams to Mr. Livingston, Apr. 23, 1782. 7 John Adams' Works, 574.

"The Comte Sarsfield began, as usual, when we were alone, to give me a lesson of etiquette; this is a trait in his character; no man more attentive to the rules of ceremony and formality; no man more precise. He says that when I made an entertainment I should have placed the ambassador of France at my right hand and the minister of Spain at my left, and have arranged the other principal personages; and when I rose from the table, I should have said: 'Messieurs, voudriez vous,' &c., or 'Monsieur le Duc, voudriez vous,' &c. All this, every one sees, is à la Française; but it is very little regarded here, and it was because it is generally neglected here that I neglected it. But the Comte, in every affair of dress, billets, rank, &c., has, from my first acquaintance with him, ever discovered such a minute attention to little circumstances. How is it possible to reconcile these trifling contemplations of a master of ceremonies with the vast knowledge of arts, sciences, history, government, &c., possessed by this nobleman? A habit of living in the world, however, is necessary, a facility of living with men—l'habitude de vivre avec les hommes.

"It is the fashion among the Dutch to arrange all the company by putting a card with the name of each gentleman and lady upon the napkins in the plate. This I never saw practiced in France; indeed, they attend but to one person in France; the feast is made in honor of one person; that is the ton. Mr. Visscher, being told by the count that he and I were to dine to-morrow with General Van der Dussen, appeared surprised, and said that the general, although he had dined with me and rode with me on horseback, would not have dared to have invited me, if he had not met me at M. Boreel's."

John Adams' Diary, Oct. 2, 1782. 3 John Adams' Works, 276.

"Ranks, titles, and etiquettes, and every species of punctilios, even down to the visits of cards, are of infinitely more importance in Europe than in America, and, therefore, Congress cannot be too tender of disgracing their ministers abroad in any of these things, nor too determined not to disgrace themselves. Congress will sooner or later find it necessary to adjust the rank of all their servants with relation to one another, as well as to the magistrates and officers of the separate Governments.

"For example, if, when Congress abolished my commission to the King of Great Britain and my commission for peace, and issued a new commission for peace in which they associated four other gentlemen with me, they had placed any other at the head of the commission they would have thrown a disgrace and ridicule upon me in Europe that I could not have withstood. It would have injured me in the minds of friends and enemies, the French and Dutch, as well as the English.

"It is the same thing with states. If Mr. Jay and I had yielded the punctilio of rank, and taken the advice of the Count de Vergennes and Dr. Franklin, by treating with the English or Spaniards, before we were put upon the equal footing that our rank demanded, we should have sunk in the minds of the English, French, Spaniards, Dutch, and all the neutral powers. The Count de Vergennes certainly knows this. If he does not, he is not even a European statesman. If he does know it, what inference can we draw but that he means to keep us down if

he can; to keep his hand under our chin to prevent us from drowning, but not to lift our heads out of water."

Mr. J. Adams to Mr. Livingston, Nov. 8, 1782. 8 John Adams' Works, 3.

"He (the Duke of Dorset) then told me I must be in London time enough to pay my respects to the King on the 4th of June, his birthday; that to that end I must carry over from hence a fine new coat, ready-made, for that it was a rule of etiquette there for everybody who went to court to have new clothes upon that day and very rich ones, and that my family must be introduced to the Queen. I told him I was sorry to hear that, but that I hoped it was not indispensable, for that as at the court of Versailles the families of ambassadors only were required to be presented, and ministers plenipotentiary and envoys had their option, my family had chosen to avoid it here for many reasons. He said it was true that here the etiquette required only the presentation of ambassadresses, but in England it was otherwise, and the ladies and daughters of all ministers must be presented to the Queen.

"I hope, sir, you will not think this an immaterial or a trifling conversation, when you consider that the single circumstance of presenting a family at court will make a difference of several hundred pounds sterling in my inevitable annual expenses. This is not the first serious lecture I have had upon the subjects of etiquette, and even dress. I have formerly related to you in conversation another much more grave, which I had five years ago from the Count de Vergennes. I believe I have also repeated to you similar exhortations made to me even by the best patriots in Holland. There is a certain appearance in proportion to rank which all the courts of Europe make a point of exacting from everybody who is presented to them."

Mr. J. Adams to Mr. Jay, May 13, 1785. 8 John Adams' Works, 250.

"There are a train of other ceremonies yet to go through in presentations to the Queen and visits to and from ministers and ambassadors, which will take up much time and interrupt me in my endeavors to obtain all that I have at heart—the objects of my instructions. It is thus the essence of things is lost in ceremony in every country of Europe. We must submit to what we cannot alter. Patience is the only remedy."

Mr. J. Adams to Mr. Jay, June 2, 1785. 8 John Adams' Works, 259.
As to official "etiquette" see, further, 3 John Adams' Works, 276, 306; 7 *ibid.*, 578; 8 *ibid.*, 3, 4, 39, 250, 251, 259, 367, 480, 489, 490.

"Every one who has any knowledge of my manner of acting in public life will be persuaded that I am not accustomed to impede the dispatch or frustrate the success of business by a ceremonious attention to idle forms. Any person of that description will also be satisfied that I should not readily consent to lose one of the most important functions of my office for the sake of preserving an imaginary dignity; but, perhaps, if there are rules of proceeding which have originated from the wisdom of statesmen, and are sanctioned by the common consent of nations, it would not be prudent for a young state to dispense with them altogether, at least without some substantial cause for so doing. I have myself been induced to think, possibly from the habits of experience, that in general the best mode of conducting negotiations, the

detail and progress of which might be liable to accidental mistakes or unintentional misrepresentations, is by writing. This mode, if I was obliged myself to negotiate with any one, I should still pursue. I have, however, been taught to believe that there is in most polished nations a system established, with regard to the foreign as well as the other great Departments, which, from the utility, the necessity, and the reason of the thing, provides that business should be digested and prepared by the heads of those Departments."

President Washington to Count de Moustier, May 25, 1789. 10 Washington's Writings, 9.

"Upon the whole, it was thought best to confine my invitations to official characters and strangers of distinction. This line I have hitherto pursued. Whether it may be found best to adhere to it or depart from it, must in some measure be the result of experience and investigation."

President Washington to Mr. Stuart, July 26, 1789. 10 Washington's Writings, 19.

"To you, sir, it will be unnecessary to undertake a general delineation of the duties of the office to which you are appointed. I shall, therefore, only express a desire that they may be constantly exercised in that spirit of sincere friendship which we bear to the English nation, and that in all transactions with the minister his good dispositions be conciliated by whatever in language or attentions may tend to that effect. With respect to their Government or policy, as concerning themselves or other nations, we wish not to intermeddle in word or deed, and that it be not understood that our Government permits itself to entertain either a will or opinion on the subject."

Mr. Jefferson, Sec. of State, to Mr. Pinckney, July 11, 1792. 2 Randall's Life of Jefferson, 59.

Mr. Genet's note of September 18, 1793, to Mr. Jefferson, giving his complaints of his treatment by the Administration, is in 1 Am. St. Pap. (For. Rel.), 173. Of his treatment by President Washington he complains as follows: "I will tell you, then, without ceremony, that I have been extremely wounded, sir: 1st. That the President of the United States was in a hurry, before knowing what I had to transmit to him on the part of the French Republic, to proclaim sentiments on which decency and friendship should at least have drawn a veil. 2d. That he did not speak to me at my first audience but of the friendship of the United States towards France, without saying a word to me, without announcing a single sentiment, on our revolution—while all the towns, from Charleston to Philadelphia, had made the air resound with their most ardent wishes for the French Republic. 3d. That he had received and admitted to a private audience, before my arrival, Noailles and Talon, known agents of the French counter-revolutionists, who have since had intimate relations with the members of the Federal Government. 4th. That this First Magistrate of a free people decorated his parlor with certain medallions of "Capet" and his family, which

served at Paris as signals of rallying." A series of other specifications followed, relative to the international rulings of the Administration.

As to the medallion of "Capet," it may be noticed that full length pictures of Louis XVI and Marie Antoinette, presented to Congress at the close of the American Revolution, remained hung on the walls of Congress at Philadelphia until after the French revolution. They were then, according to a letter of Mr. E. Thornton, an attaché of the British legation, (Bland-Burgess papers, 238,) dated March 6, 1792, probably from complaints such as those made above, "covered with a curtain." Mr. Thornton goes on to say: "I don't know whether I mentioned to you formerly that the key of the Bastile, given to a certain great man here (Washington) by Lafayette, is hung up in a glass frame in the principal room of the great man's house with an engraving of Louis XVI, *Le patroite Roi des Français*, opposite. In the drawing-room of Mr. Jefferson there are three busts—of Franklin, Paul Jones, and Lafayette—three gentlemen, the first of whom had talents without virtue, the second deserved hanging, and the last, not improbably, may meet the same fate." No doubt the picture of "Capet" in Washington's parlor which gave offense to the Frenchman in September because it was there at all, was a companion to that which gave offense to the Englishman in June because the inscription was "patriot king." Such incidents as these show the difficult position of Washington in trying to steer a just course between the two rival missions.

"No Government can disregard formalities more than ours. But when formalities are attacked, with a view to change principles, and to introduce an entire independence of foreign agents on the nation with whom they reside, it becomes material to defend formalities."

Mr. Jefferson, Sec. of State, to the minister of France, December 9, 1793, when refusing to accept foreign commissions unless addressed to the United States, or to the President of the United States. 4 Jeff. Works, 90.

"Among Mr. Jefferson's papers was found one indorsed in his handwriting: 'This rough paper contains what was agreed upon,' meaning, undoubtedly, what was agreed upon by the President and his Cabinet:

"'I. In order to bring the members of society together in the first instance, the custom of the country has established that residents shall pay the first visit to strangers, and, among strangers, first comers to later comers, foreign and domestic; the character of strangers ceasing after the first visits. To this rule there is a single exception. Foreign ministers, from the necessity of making themselves known, pay the first visit to the ministers of the nation, which is returned.

"'II. When brought together in society, all are perfectly equal, whether foreign or domestic, titled or untitled, in or out of office.

"'All other observances are but exemplifications of these two principles.

"'I.—1st. The families of foreign ministers, arriving at the seat of Government, receive the first visit from those of the national ministers, as from all other residents.

"'2d. Members of the legislature, and of the judiciary, independent of their offices, have a right as strangers to receive the first visit.

"'II.—1st. No title being admitted here, those of foreigners give no precedence.

"'2d. Difference of grade among the diplomatic members gives no precedence.

"'3d. At public ceremonies, to which the Government invites the presence of foreign ministers and their families, a convenient seat or station will be provided for them, with any other strangers invited, and the families of the national ministers, each taking place as they arrive, and without any precedence.

"'4th. To maintain the principle of equality, or of *pêle-mêle*, and prevent the growth of precedence out of courtesy, the members of the Executive will practice at their own houses, and recommend an adherence to the ancient usuage of the country, of gentlemen in mass giving precedence to ladies in mass, in passing from one apartment where they are assembled into another.'

"The President had two public days for the reception of company, the 1st of January and 4th of July, when his doors were thrown open to all who chose to enter them. At other times, all who chose were permitted to call upon him on business or as a matter of courtesy."

2 Randall's Life of Jefferson, 667.

"Very soon, therefore, after entering on the office of Secretary of State I recommended to General Washington to establish, as a rule of practice, that no person should be continued on foreign mission beyond an absence of six, seven, or eight years. He approved it. On the only subsequent missions which took place in my time, the persons appointed were notified that they could not be continued beyond that period. All returned within it except Humphreys. His term was not quite out when General Washington went out of office. The succeeding Administration had no rule for anything; so he continued. Immediately on my coming to the Administration I wrote to him myself, reminded him of the rule I had communicated to him on his departure; that he had then been absent about eleven years, and consequently must return. On this ground solely he was superseded. Under these circumstances, your appointment was impossible after an absence of seventeen years. Under any others I should never fail to give to yourself and the world proofs of my friendship for you, and of my confidence in you. Whenever you shall return, you will be sensible in a greater, of what I was in a smaller, degree, of the change in this nation from what it was when we both left it in 1784. We return like foreigners, and, like them, require a considerable residence here to become Americanized.

"There is no point in which an American, long absent from his country, wanders so widely from its sentiments as on the subject of its foreign affairs. We have a perfect horror at anything like connecting ourselves with the politics of Europe. It would indeed be advantageous to us to have neutral rights established on a broad ground; but no dependence can be placed in any European coalition for that. They have so many other by-interests of greater weight that some one or other will always be bought off."

President Jefferson to Mr. Short, Oct. 3, 1801. 2 Randall's Life of Jefferson, 672. See 3 Schouler's Hist. U. S. 122, instancing illustrations of Mr. Jefferson's position above stated.

"In the intercourse between the Secretaries and Attorney-General of this Government and the ministers of foreign powers the period of the arrival of either at the seat of Government is not considered. The first visit is expected from the foreign ministers. This rule, it is believed, is invariably observed by the Governments of Europe, and seems to grow out of the mission itself. It is proper that the minister sent on a foreign mission should make himself known to the Government to which he is addressed, and that he should extend his visit to all the chief officers of that Government. It is equally correct, on any change in the members of the Administration, that the first visit should be paid to those who may be brought into power. The intercourse must be opened, and that ought to be commenced by the foreign ministers, the principle being the same between these parties as between the Government and the foreign ministers on their first arrival in the country. The rule which prevails between persons in private life is not applicable to this case. This latter rule varies in different places, and is founded on no fixed principle."

Mr. Monroe, Sec. of State, to Mr. de Daschkoff, Mar. 9, 1813. MSS. Notes, For. Leg.

"In England the secretaries of the Government take rank of foreign ministers, as do the family of the sovereign, the arch-chancellor, the arch-treasurer, and others. It is believed that the marshals of France would all take rank of the foreign ministers if they were brought into the same circle. This, however, is not asserted with confidence; a knowledge of detail is not possessed.

"The same rules are supposed to exist at St. Petersburg and at other European courts—the same precedence to be given to the secretaries of the Government over foreign ministers of every grade, and to all those distinguished persons who take rank of the secretaries of the Government. Precise information of the rules adopted at St. Petersburg is also wanting.

"The secretaries of the Governments above mentioned return the visits of ambassadors only. Their wives follow their example.

"The visits of the American ministers in England and France to the secretaries of state were in many instances not returned, nor were those of their wives to the families of the secretaries of state. The omission was imputed to the circumstance that our representatives were ministers plenipotentiary and not ambassadors.

"The Government of the United States adopts the rule of the European Governments, with this exception, that the heads of the Government return the first visit of foreign ministers, without regard to grade, and that their wives return every visit."

Mr. Monroe, Sec. of State, to Mr. Serurier, May 5, 1814. MSS. Notes, For. Leg.

"I have just returned from Carleton House, it being the seventh day in succession that I have rode into town on purpose to make my inqui-

ries there in the usual manner respecting the present King's health. The answer to-day is that he is out of all danger. These are attentions which it it is believed he will be extremely scrupulous in expecting of foreign ministers. Indeed, the ceremonious inquiries which we are obliged to make, under present circumstances, throughout all the circles of the royal family keep our carriages the livelong day in motion over the rattling stones. In mine I have just had a break-down. You know how dispersed they live, from stable-yard to Kensington Palace, and how many of them there are. I have often thought since I came here that we maintain our diplomatic intercourse, at least with this Government, upon terms of great inequality. I have yet to learn in what point our Republic is behind this monarchy in dignity, *and yet what are not the acts of ceremonious homage, to give them no other appellation, which the minister of the former is compelled to go through here from which the British minister with us is exempt!*"

Mr. Rush, minister at London, to Mr. Monroe, President, Feb. 6, 1820. Confidential. Monroe Pap., Dept. of State.

"Nor is there an individual who has attended at all to the progress of the dispute who does not see that it was embittered from the first, and wantonly urged to its present fatal issue by the insolent, petulant, and preposterous tone of those very individuals who insisted upon that miserable experiment (orders in council) and plunged their own country in wretchedness, only to bring down upon it the reluctant hostility of its best customers and allies. If those mischievous and despicable councils were once cordially renounced; if this paltry and irritating tone were forever interdicted at our public offices; if the negotiations were committed to a man acceptable to the Americans, and free from the suspicion of insincerity which our late diplomatic communications with them have so naturally excited, we are fully persuaded that a speedy and a honorable termination might yet be put to this unnatural contest, which, if it be purely ruinous and disreputable to us, promises also to be so much more detrimental than beneficial to our opponents."

Edinburgh Rev., Nov. 1812, Vol. 20, 459.

As to the tone of the correspondence with Mr. Canning, Mr. J. Q. Adams, Secretary of State, in a confidential letter to Mr. Monroe, President, August 3, 1821, writes:

"I am afraid you will again think my draft unnecessarily harsh, and if so (I) request of you to strike out everything which may be justly esteemed of that character. But I think you will observe little delicacy towards the American Government in the tone of his (Canning's) note. I believe it to be important to hold up constantly on our part of the correspondence the *nature* of our objections to the proposals of Great Britain; and there is so much of a *scolding* in the remarks upon our declining their proposals, and upon our offered substitute, that I thought a spirited notice of them due in justice to ourselves."

Monroe Pap., Dept. of State.

"Our disposition to discuss seems to have augmented, and the spirit of conciliation has manifestly been abandoned in our councils. We are determined to say harsher things than are said to us, and to have the last word. Where this temper will lead us cannot be distinctly foreseen. We are now on bad terms with the principal maritime states, and perhaps on the brink of a rupture with Russia. * * * I have labored

to restrain this predominant disposition of the Government, *but have succeeded only partially in softening the asperities which invariably predominate in the official notes of the State Department.* If these notes had been permitted to remain as originally drafted, we should, I believe, have before this time been unembarrassed by diplomatic relations with more than one power. The tendency to estrange us from all foreign powers, which the style of the notes of the State Department has uniformly had, has been so often demonstrated, yet so often permitted, that I have almost given up the idea of maintaining friendly relations with those powers."

Mr. Crawford, Sec. of the Treasury, to Mr. Gallatin, minister at Paris, May 13, 1822. 2 Gallatin's Writings, 241. See, as to "sharpness" of Mr. Pickering's papers, 8 Lodge's Hamilton, 380.

Mr. Crawford's antagonism to Mr. Adams, both being candidates for succession to Mr. Monroe, in whose Cabinet they were, was at this time avowed. It is certain, however, that Mr. Adams's negotiations with Great Britain and France failed on points as to which the administration of General Jackson subsequently succeeded. That this, notwithstanding Mr. Adams's high public spirit and matchless dialectic skill, may be attributed to want of tact and of suitable recognition of the characteristics of those with whom he had to deal, is illustrated by the success of the subsequent negotiations. Participation in the West Indian commerce was refused by Great Britain when demanded by Mr. Adams as a right; it was granted to General Jackson when asked as an equivalent. Payment of Napoleon's spoliations was refused to Mr. Adams by Louis XVIII when it was made the subject of continuous diplomatic irritation; it was granted to General Jackson by Louis Philippe when it was the subject of peremptory though courteous demand.

"At these audiences (those of President Monroe with foreign ministers at Washington) the President observes the usual forms practiced by European sovereigns on similar occasions; that is, he receives them standing, dressed in a half military uniform or a full suit of black. The ministers are in full court dresses. He stands in the center of the drawing-room, and I accompany them, keeping on the right hand. On receiving the letter the President hands it, unopened, to me. * * * The President has a general answer to the short addresses which the ministers make in delivering these letters, viz: 'That the United States take a great interest in everything that concerns the happiness of their sovereign,' with very little variation adapted to each particular case. He makes no other conversation."

4 Memoirs of J. Q. Adams, 314.

"There is one difference in the correspondence of all the foreign ministers here from that which is usual in Europe, they write letters, instead of notes, in the first person instead of the third. The effect of this difference upon style is greater than any one not habituated to both modes would imagine. * * * Another difference is that we always use our own language. Onis, in return, always writes, even to the most trivial notes of compliment, in Spanish. Bagot, of course, writes in English, and the other foreign ministers, except Correa, write in French; he always writes in English."

4 Memoirs of J. Q. Adams, 327.

"In a private letter which I wrote to the President about two months ago I mentioned that I was informed, through a respectable channel,

that one of the King's ministers had, about the time that the order in council of July last was decided upon, expressed his great dissatisfaction at the language of the Government of the United States in their diplomatic intercourse with Great Britain, to which he added that the United States seemed as if they wished to take an undue advantage of the temporary distresses of England, and that it was time for her to make a stand and to show her displeasure. Satisfied that nothing offensive whatever could be found in the diplomatic correspondence proper, either here or at Washington, I thought that, however extraordinary it might appear, the British Government might have taken offense at some expressions in Mr. Adams's instructions to Mr. Rush, which would naturally be written with more freedom of style than letters addressed to a British minister. In this conjecture it now appears that I am mistaken. * * * I have stated in a former dispatch my conversation of the 5th instant with Mr. Canning, in which he used the same language and nearly the same words in reference to Mr. Baylies's report on the territory west of the Stony Mountains. It is most undoubtedly that report which has given great offense, and I am apt to think that, though not the remote or only, it was the immediate, cause of the order in council."

Mr. Gallatin, minister at Paris, to Mr. Clay, Sec. of State, Nov. 27, 1826. 2 Gallatin's Works, 342.

Mr. Adams, in commenting on the above, said (waiving the question of regarding any other authority than the State Department as representing the Government), that it was about as rational to make the Administration responsible for Mr. Baylies, then in opposition, as it would be to treat Mr. Canning as responsible for the utterances in Parliament of Mr. Brougham or Mr. Hume.

President J. Q. Adams to Mr. Gallatin, March 20, 1827. 2 Gallatin's Writings, 367.

That a foreign minister cannot in his correspondence take notice of the domestic politics of the country of his mission, see *supra*, §§ 79, 106.

The President "would have been better satisfied if you had never allowed yourself to employ, in your intercourse and correspondence with the Brazilian Government, provoking or irritating expressions. These, he thinks, ought always to be avoided."

Mr. Clay, Sec. of State, to Mr. Raguet, Jan. 20, 1827. MSS. Inst., Ministers. Br. and For. St. Pap., vol. 15, 1128.

"The United States may in their diplomatic intercourse have been guilty of much cold argumentation, never, to my knowledge (excepting Pickering *v.* Adet), of any want of the usual courtesy and civility. The charge is quite untrue as to the correspondence, &c., with Great Britain, since the treaty of Ghent. See, in the additional documents on colonial intercourse, laid before Congress on 28th April last, No. 259, Lord Dudley's declaration, at bottom of page 42, * * * and I do *know* that the British Government was equally pleased with the tone and manner of Mr. Rush during the whole of his mission and negotiations. But we publish everything, and the instructions of a Secretary of State to an American minister abroad must be explicit, and may not

always be clothed in the same polite language towards a foreign nation which is used in a diplomatic note."

Mr. Gallatin to Mr. Everett, Aug. 6, 1828. 2 Gallatin's Writings, 400.

In Lord Dudley's note to Mr. Gallatin, the passage referred to is as follows: "The undersigned takes pleasure in recognizing in both these letters of Mr. Gallatin, and especially in the inquiry which closes the second of them, the same spirit of good will and conciliation which, in the midst of discussions involving no small difference of opinion, has characterized Mr. Gallatin's correspondence with the British Government."

Ibid.

"In all discussions between Government and Government, whatever may be the differences of opinion on the facts or principles brought into view, the invariable rule of courtesy and justice demands that the sincerity of the opposing party in the views which it entertains should never be called in question. Facts may be denied, deductions examined, disproved, and condemned, without just cause of offense, but no impeachment of the integrity of the Government in its reliance on the correctness of its own views can be permitted without a total forgetfulness of self-respect."

Mr. Forsyth, Sec. of State, to Mr. Livingston, Mar. 5, 1835. MSS. Inst., France.

The United States Government will frankly and promptly disavow indecorous language used in variance with their instructions by its diplomatic agents to the Governments to which they are accredited.

Mr. Forsyth, Sec. of State, to Mr. Ellis, Nov. 16, 1836. MSS. Inst., Mex.

The Mexican minister of foreign affairs having addressed directly to the Secretary of State (Mr. Webster) a letter which the President considered "derogatory to the character of the United States and highly offensive," the President directed "that no other answer be given to it than the declaration that the conduct of the Government of the United States, in regard to the war between Mexico and Texas, having been always hitherto governed by a strict and impartial regard to its neutral obligations, will not be changed or altered in any respect or in any degree. If for this the Government of Mexico shall see fit to change the relations at present existing between the two countries, the responsibility remains with herself."

Mr. Webster, Sec. of State, to Mr. Thompson, July 13, 1842. MSS. Inst., Mex.; 6 Webster's Works, 459.

When a foreign minister uses in his correspondence with the Department language offensive to this Government no further correspondence with him will be maintained.

"During the Presidency of Mr. Madison, when the language of a British minister, Mr. Jackson, residing in this country, had proved of-

fensive to this Government, that minister was promptly informed, without even first submitting his correspondence to his own Government, that no further communications would be received from him, and the reason for the step was afterwards made known to his Government. Mr. Jackson himself, in defending the positions he had taken, accompanied his observations with the remark that '*beyond this it suffices that I do not deviate from the respect due to the Government to which I am accredited.*' How, then, was this matter regarded at the British foreign office, at the head of which, at that time, was Lord Wellesley. His lordship, to whom the correspondence had been submitted, expressed the concern of His Majesty that the interruption of the intercourse had taken place by the command of this Government before it had been possible for His Majesty, by any interposition of his authority, to manifest his invariable disposition to maintain the relations of amity with the United States. He conveyed the most positive assurances from Mr. Jackson that it had not been his purpose to give offense to the United States Government by any expression contained in his letters, or by any part of his conduct. He suggested, indeed, that a better and more usual course would have been to convey to his Government a formal complaint against the minister with a view to suitable redress. And although he said His Majesty had not marked with any expression of displeasure the conduct of Mr. Jackson, who had not appeared to him on the occasion to have committed any intentional offense against the Government of the United States, yet, as he was always disposed to pay the utmost attention to the wishes and sentiments of states in amity with him, he had directed the return of Mr. Jackson to England. And in further testimony of a sincere desire to cultivate an intercourse with the United States on the most friendly terms, his lordship added, that he was authorized to assure this Government that His Majesty was ready to receive, with sentiments of undiminished amity and good will, any communication which the Government of the United States might deem beneficial to the mutual interests of both countries, through any channel which might appear advantageous to the Government of the United States."

Mr. Clayton, Sec. of State, to Mr. Rives, Sept. 14, 1849. MSS. Inst., France.

"The President still maintains the position advanced in my first note to Mr. de Tocqueville, that this Government is the guardian of its own honor, and, of course, the sole judge of what is due to it. He has refused to hold further correspondence with Mr. Poussin, and he will refuse to hold it with any other minister from any country who shall use similar language, or prove himself equally disrespectful to this Government. He accords to all other Governments the same rights, in this respect, which he demands for his own. If the French Government would not hold such language disrespectful when applied to itself, we shall not question its right to decide as it shall think fit. The law of

nations has wisely given to each the right to maintain its own honor in such cases, by placing the remedies for insult in its own power. One of these remedies is to refuse to correspond any longer with the offender, and the right cannot be denied without incurring the risk of involving the world in wars about the meaning of words and the forms of diplomatic etiquette."

Mr. Clayton, Sec. of State, to Mr. Rives, Jan. 1, 1850. MSS. Inst., France.

The Government of the United States will be more tolerant of expressions of petulance and acts of annoyance on the part of Governments of South American states threatened with revolution than it would be of similar acts or expressions by stable European Governments.

Mr. Cass, Sec. of State, to Mr. Lamar, July 25, 1858. MSS. Inst. Am. St.

"On the arrival of Mr. Ward at Peking, he requested an audience of the Emperor to present his letter of credence. This he did not obtain, in consequence of his very proper refusal to submit to the humiliating ceremonies required by the etiquette of this strange people in approaching their sovereign. Nevertheless, the interviews on this question were conducted in the most friendly spirit, and with all due regard to his personal feelings and the honor of his country. When a presentation to His Majesty was found to be impossible, the letter of credence from the President was received with peculiar honors by Kweilang, 'the Emperor's prime minister and the second man in the Empire to the Emperor himself.' The ratifications of the treaty were afterward, on the 16th of August, exchanged in proper form at Pei-tsang. As the exchange did not take place until after the day prescribed by the treaty, it was deemed proper, before its publication, again to submit it to the Senate. It is but simple justice to the Chinese authorities to observe that throughout the whole transaction they appear to have acted in good faith and in a friendly spirit towards the United States. It is true this has been done after their own peculiar fashion; but we ought to regard with a lenient eye the ancient customs of an Empire dating back for thousands of years, so far as this may be consistent with our national honor. The conduct of our minister on the occasion has received my entire approbation."

President Buchanan, Third Annual Message, 1859.

In regard to the ceremony of presentation to the Emperor of China, see Mr. Webster, Sec. of State, to Mr. Cushing, May 8, 1843. 6 Webster's Works, 470, 471. See also App., Vol. III, § 107.

As to presentation of American citizens at the court of France, see Senate Ex. Doc. No. 19, 37th Cong., 2d sess.

"I very freely confess to the opinions, first, that an audience or presentation of any but diplomatic persons at court is to be regarded not in any degree as a right of the person received, but as a courtesy extended to him. Secondly, that the imperial court is entirely at liberty to define and prescribe the qualifications, conditions, and terms on which

strangers shall be admitted into its society. Thirdly, if American citizens request you to present their wishes for admission at court, you can only present them by complying with the terms and conditions prescribed. Fourthly, referring to the questions which have actually arisen, I think that you can properly, in all cases, give the occupation or profession of any person whose wishes you present. You cannot, indeed, undertake to assign the social position of each person, for that would be to discriminate, or to seem to discriminate, by European rules, between persons who, being all alike citizens, may justly claim to be equals in social position at home, and, therefore, equals in the consideration of this Government itself, when they are abroad. It seems to me, however, that in many cases, there are circumstances belonging to the persons you propose to present which may be properly stated, such as official positions held by individuals at the time, or even at some previous time. Distinctions arising from personal merit, such as military, scientific, or literary, or of a political character, and distinctions as founders of scientific, literary, or humane institutions. But, even when these suggestions are made in compliance with the rules of the court, it is not to be claimed as a matter of right, or even as a matter of national comity, that the presentations or audiences shall therefore be granted.

"I have dwelt on the subject longer than was due to any importance that it can claim. It is peculiarly uncomfortable at this moment, to find American citizens leaving their country, a prey to faction and civil war, disturbing the court of a friendly power, and embarrassing our representative there with questions of personal interest and pretension. Let the Emperor and Empress of France receive whom they will, and as many or few as they will, and let all others, as well as those who are admitted, turn their attention to the question how they can serve their country abroad; and if they find no better way to do it than by making their attendance in the saloons of the Tuileries, let them return home to a country that now, for the first time, needs the active efforts of every one of its loyal children to save itself from destruction.

"Finally, above all things, have no question with the Government of France on this subject. Rather introduce nobody, however justly distinguished, than let a question of fashion or ceremony appear in the records of the important period in which we are acting for the highest interests of our country and of humanity."

Mr. Seward, Sec. of State, to Mr. Dayton, Feb. 3, 1862. MSS. Inst., France; Senate Ex. Doc. No. 19, 37th Cong., 2d sess.

"Presentations to members of reigning families cannot be made by private citizens through the diplomatic agency of the Government. They should be made through the diplomatic representative of the foreign Government."

Mr. Fish, Sec. of State, to Mr. Montgomery, Dec. 5, 1871. MSS. Dom. Let.

The line to be adopted by foreign ministers as to presentation of Americans at court must be settled by such ministers, and cannot be determined by the Department of State.

Mr. Fish, Sec. of State, to Mr. Jay, Jan. 29, 1872. MSS. Inst., Austria.

"But it would certainly be preferable to refuse to present any one not belonging to the legation than to incur the risk of offending by introducing persons of questionable character and antecedents, or to make such invidious distinctions as would be unavoidable by extending the list."

Ibid.

"Whether all audiences (in China) should be delayed until the Emperor shall arrive at such age as to consider and direct a change in the forms, or until the increasing intercourse with China shall prove the wisdom of such change, may be somewhat doubtful, and while the Department is not informed as to the particular change which, in Mr. Wade's opinion, it may be advisable to adopt in the ceremonial, the President is clearly of the opinion, as stated in the circular dispatch of the Department, that it will be advisable as nearly as may be possible to conform therein to western usage."

Mr. Cadwalader, Acting Sec. of State, to Mr. Thornton, Aug. 20, 1875. MSS. Notes, Gr. Brit. See App., Vol. III, § 107.

An article on diplomatic etiquette is given in Blackwood's Mag. for Dec., 1873, vol. 114, p. 667 *ff.*

As to etiquette observed on the visit of the Grand Duke Alexis, of Russia, to Washington, in 1877, see Mr. Fish, Sec. of State, to Mr. Boker, Mar. 7, 1877. MSS. Inst., Russia.

"It is the custom of diplomatic intercourse for a foreign representative to address communications in his own tongue to the Government to which he is accredited. * * * The request, however, for a French version (in Tripoli) to accompany English communications is regarded as reasonable."

Mr. Frelinghuysen, Sec. of State, to Mr. Robeson, Feb. 28, 1882. MSS. Inst., Barb. Powers.

The negotiations in 1807–'09 with the British legation at Washington are striking illustrations of the importance of courtesy and of sincerity in diplomatic action. The circumstances of the attack on the Chesapeake by the Leopard, in 1807, are elsewhere narrated, and it will be remembered that President Jefferson, immediately after the occurrence, demanded reparation and apology from Great Britain, and simultaneously interdicted all British armed vessels from entering the territorial waters of the United States, (See *infra*, § 315*b*.) The Fox-Grenville ministry was then in power in England, and Mr. David Montague Erskine, son of Lord Erskine, then chancellor, and a grandson of the Earl of Buchan, was sent as minister to the United States for the purpose of settling not merely the complications connected with the outrage on the Chesapeake, but those arising from the order of council of 1807, by which the British ministry had placed the whole northern coast of Europe under a paper blockade, and had prohibited

all neutral coasting trade and colonial trade between belligerent ports. (See *infra*, § 388.) Mr. Erskine's selection was peculiarly fortunate. (See more fully, *supra*, § 84.) He had no little skill as a diplomatist (see Lord Erskine's pamphlet in his defense, published in 1807); his wife was a member of a Philadelphia family of high social position; he inherited his father's kindly manners and sweet temper without his father's occasional tendency to dissipation; and he was sincerely desirous of carrying out his original instructions of restoring the friendly relations between the two countries. It is true that on the fall of the Fox-Grenville ministry, his instructions were less conciliatory; but still, taking them in their whole scope, he conceived he was only carrying out their spirit when on April 18, 1809, he concluded with Mr. Madison's administration, which had just come into power, a convention providing that on the repeal of the orders of council of 1807 and reparation for the aggression on the Chesapeake, the President's proclamation excluding British men-of-war from American waters should be recalled, and commercial intercourse with Great Britain restored. On April 19 Mr. Smith, Secretary of State, received a note from Mr. Erskine stating that the orders of council in question were to be withdrawn on June 10. On the same day the President issued a proclamation declaring that trade with Great Britain was to be resumed on June 10, and this was followed not merely by a series of public meetings expressing joy at the peace thus to be firmly established, but by the introduction in the House (May 3, 1809), by Mr. John Randolph, of a resolution declaring "that the promptitude and frankness with which the President has met the overtures of the Government of Great Britain towards a restoration of harmony and freer commercial intercourse between the two nations meet the approval of this House." But before this resolution could be acted on, intimations from England led to a doubt whether the British ministry would ratify Mr. Erskine's convention; and on July 31 Mr. Erskine was himself compelled to announce to the Secretary of State not merely his own recall, but the repudiation of the convention by his Government. (See *supra*, § 84.) This recall and disavowal were the result, as we now know, of a belief, partly that the party divisions in New England would paralyze the Administration, and partly that the tone of brutal dictation a short time before assumed toward Denmark might with a like success be assumed towards the United States, and that the United States might, by such dictation, be forced into alliance with Great Britain and war with France. But whatever might be the cause, the result, as is stated by Sir A. Allison, in his review of this period of British history, was peculiarly unfortunate for Great Britain, as it prevented a settlement by which Great Britain would have been saved from the war of 1812, and, as a counterpoise, led to closer relations between the United States and France. (*Supra*, § 84.)

The recollection of the attack on Denmark, to which reference has just been made, had, no doubt, something to do with Mr. Canning's selection, as the successor of Mr. Erskine, of Mr. Francis J. Jackson, who had been British envoy to Denmark at the time of the projected attack on Copenhagen, and who, from his agency in that outrage, went by the name of "Copenhagen Jackson." In a remarkable work, published in London in 1872,* by a member of Mr. F. J. Jackson's family, we have a series of letters from Mr. F. J. Jackson, narrating the temper in which he

* The diaries and letters of Sir G. Jackson; in two volumes, London, 1872; second series, under title of the "Bath Archives," London, 1873.

visited Denmark, and in which he afterwards visited the United States. In a letter of August 7, 1807, when he was on the first mission, he thus speaks: "I had an interview yesterday with the Prince Regent, to whom I stated that I was ordered to demand the junction of the Danish fleet with that of Great Britain, and that in case of refusal it was the determination of His Majesty to enforce it. He replied that 'such a proposal was utterly opposed to every principle of honor, and that the menace by which it was accompanied made it still more offensive.'" The "surrender" being refused, the British fleet, coming down suddenly in overpowering strength, made the attack. The Danes resisted to their utmost. "They have already," so Mr. Jackson writes on September 1, 1807, "burnt their suburbs and destroyed every house that was likely to afford shelter to our people." The result was, to follow Mr. Jackson's narrative (Sept. 14, 1807), because Denmark refused, as a neutral, to give up her fleet to Great Britain, the "burning a capital city, the residence of a court, and destroying a great commercial depot." And the upshot of this "negotiation" was the seizure by Great Britain, without declaration of war, of the Danish fleet, Denmark being at the time at peace with Great Britain, and utterly unaware that such an attack was even dreamed of. Mr. F. J. Jackson was therefore familiar with the tone adopted by British diplomatists to minor European states. His subsequent public dispatches to his Government, during his mission to the United States, show that he was not without pride in having adopted that tone with Denmark. Even more transparently is this temper exhibited in the series of letters above noticed, in which his private correspondence with his family at the time is given. According to the appendix to volume I of the second series the matter principally before the new envoy was the arrangement of the difficulties caused by the attack on the Chesapeake and "the issuing, by President Jefferson, of a proclamation, dated July 2, 1807, interdicting the entry of all the American ports to the whole of the British navy. This produced fresh orders in council, intended to support British maritime rights and commerce, and to counteract Bonaparte's continental system. America's wrath," so the editor proceeds to say, "was kindled against England for resorting to measures of self-defense, and in the month of December, 1807, Mr. Jefferson succeeded in carrying a resolution in Congress that all trade and intercourse with foreign nations should be suspended. Bickerings and contentions at sea, mutual manifestoes, embargoes, stoppages to trade, and much angry diplomacy followed. In this state matters remained down to the declaration of war in June, 1812, when Mr. Madison, who passionately desired that his term of office should be distinguished by the annexation of Canada to the United States, was President."

As to this statement, giving, no doubt, Mr. F. J. Jackson's after views of the object and nature of his mission, the following observations may be made:

First. The private correspondence of the parties on file in the Department of State, as well as the official correspondence of the Department, shows that neither Mr. Jefferson nor Mr. Madison desired war with Great Britain, and that if they erred, it was in their extreme solicitude for peace. It may be safely averred that the consideration which drew them finally to the adoption of warlike measures was the fact that the grievances which the United States suffered were those of the maritime and commercial interests, which both Mr. Jefferson and Mr. Madison felt, from their own personal association with the agricultural classes,

and from their wish to subdue sectional and class rivalries, a peculiar desire to protect.

Second. Mr. Madison, as his correspondence shows, had not only no desire for the "annexation of Canada," but such an annexation, coupled as it would be with a protracted and deadly war with Great Britain, was to his peaceful and unaggressive temper a contingency peculiarly dreaded.

Third. With instructions on their face friendly Mr. F. J. Jackson, as we now learn from his private letters, was under orders to grant nothing, but simply to "temporize" and to "postpone" actual concession. But while thus putting off the granting of reparation for the outrages to which the United States had been subjected, he felt that he was playing the part to which he was assigned, and for which his prior diplomatic achievements fitted him, when, repudiating Mr. Erskine's course of kindly and courteous treatment of the Government at Washington, he began by exhibiting to that Government an attitude of arrogance.

His first letter in the American series is dated at Washington on October 7, 1809. He begins with a slur at Mr. Erskine, whom he describes as a "Scotchman with an American wife, who would be a fine lady, who left his house in such a state of ruin and dirt that it will be several weeks before we can attempt to move in it." He is ready at the outset to plunge into party politics. "Many of the Democrats who were his (Erskine's) intimates do not come to me, and I am well pleased and somewhat flattered by the distinction."

Of his first interview with Mr. Madison he thus proceeds to speak:

"Madison, the President, is a plain and rather mean looking little man, of great simplicity of manners, and an inveterate enemy to form and ceremony, so much so that I was officially informed that my introduction to him was to be considered as nothing more than the reception of one gentleman by another, and that no particular dress was to be worn on the occasion, all of which I was very willing to acquiesce in. Accordingly, I went in an afternoon frock, and found the President in similar attire. Smith, the Secretary of State, who had walked from his office to join me, had on a pair of dusty boots, and his round hat in his hand. When he had introduced us, he retired, and the President then asked me to take a chair.

"While we were talking a negro servant brought in some glasses of punch and a seed cake. The former, as I had been in conference the whole morning, served very agreeably to wet, or whet, my whistle, and still more strongly to contrast this audience with others I had had with most of the sovereigns of Europe."

Of Mrs. Madison he declares (having Miss Austen in mind) that she "is fat and forty, but not fair," and he proceeds to make some disparaging and untrue statements as to her early training, which it is not worth while here to repeat, but which he qualifies by intimating that the same peculiarities attached to Mrs. Merry, the wife of one of his predecessors, whose social pretensions, as we will see, caused so much difficulty at Washington. On October 20 he writes to his brother that "Erskine is really a greater fool than I could have thought it possible to be, and it is charity to give him that name. * * * Now that I have gone through all his correspondence, more than ever am I at a loss to comprehend how he could have been allowed to remain here for the last two years. To be obliged to wade through such a mass of folly and stupidity, and to observe how our country has been made, through Erskine's means, the instrument of these people's

cunning, is not the least part of my annoyance. Between them our cause is vilified indeed. * * * In the same spirit they began with me by saying they would only negotiate upon paper. (See as to this, *supra*, § 80*b*.) But they have gained nothing by this mode, in which I was obliged to acquiesce, for I took it up in a style that brought them, in some degree, to their senses." "Madison is now as obstinate as a mule. * * * If after this we give them any satisfaction at all we had better send it wrapped up in a British ensign, and desire them to make what use of it they please. You see I keep to Lord Malmsbury's maxim, '*bas en haut*.' * * * A bad effect is produced by the minister of the junta remaining here even till he can receive fresh orders. It will encourage these people in their insolence." "At bottom they (Democrats and Federalists) are all alike, except that some few are less knaves than others." "I came," he writes on November 14, 1809, after he found his tone of menace and of insult, as adopted by him in his correspondence, had failed, "prepared to treat with a regular Government, and have had to do with a mob and mob leaders." "Do not imagine" (he being by this time notified that his recall would be asked, on the ground that it would be impossible to correspond with him after he had charged the Secretary with duplicity and falsehood), "that this is a personal affair. I have taken high ground for my country, and it was highly necessary. * * * I have my passports. * * * My object was to secure safety and inviolability for my own person, for my family, and the other members of the mission, on removing from Washington, in consequence of the outrageous and threatening language of the Democrats and the papers that express their opinions and feelings." On November 21 Mrs. Jackson thus states her husband's position, he having retired to Baltimore, out of the reach of the "threats": "We passed the first two months at Washington, the seat of Government, but Francis being accustomed to treat with the civilized courts and Governments of Europe, and not with savage Democrats, half of them sold to France, has not succeeded in his negotiation." "It would be an absolute disgrace to the country," he writes on May 1, 1810, from New York, which was his next retreat, * * * "if another minister were to be sent here without some sort of satisfaction being taken or received for the treatment I received." "A more despicable set" (the Administration) "I never met with before, and they can do neither England nor any other country any harm. They are as deficient in talent as in principle," and he goes on to detail "a disgraceful outrage that took place in that dirty nest of philosophy, Philadelphia." "We have repeated opportunities" (so he writes on August 24, 1812, three years after his return to England), "of doing what is right to the Yankees, but still hold back. I do hope that before this business (negotiation) is ended we may fall in with one of their frigates. Sawyer, with his force, ought to show their whole navy across the Atlantic." But on December 22, 1812, after the war had begun, he writes: "As to the conduct of the naval war against the Americans, it would disgrace the sixth form of Eton or Westminster." This, and the disasters of the war, with the scars it left behind, might have been spared, had Mr. Erskine's course been sustained by the British ministry, or, if that were impracticable, if he had been succeeded by a minister with whom the Government of the United States could have negotiated without loss of self respect. There was no course, under the circumstances, but to request Mr. Jackson's recall, and the increase of ill-feeling between the Governments which this request caused, coupled

with the persistent pressure of the grievances of which the United States complained, led, after the intermediate failure of Mr. Foster's mission, to war.

Sir A. Alison thus notices Mr. Jackson's dismissal, which he regards as a provocation to war, and as a chief incident in the chain of events by which the war of 1812 was forced:

"It may well be imagined what a storm of indignation was raised in the United States when the intelligence of the refusal of the British Government to ratify Mr. Erskine's convention was received, and how prodigiously it strengthened the hands of the party already in power and supported by a decided majority of the nation, which was resolved at all hazards, and against their most obvious interests, to involve the country in a war with Great Britain. Mr. Erskine, as a matter of course, was recalled, and Mr. Jackson succeeded him as British envoy at Washington; but his reception was such, from the very outset, as left little hope of an amicable termination of the differences. From the President's table, where the English minister was treated with marked indifference, if not studied insult, to the lowest ale-house in the United States, there was nothing but one storm of indignation against the monstrous arrogance of the British maritime pretensions and the duplicity and bad faith of their Government. Unhappily the elections for Congress took place during this whirlwind of passion, and such was the ascendency which the Democratic party acquired in the legislature from this circumstance that it was plain that all hopes of accommodation were at an end. Mr. Jackson continued, however, at the American capital, striving to allay the prevailing indignation and renew the negotiation where Mr. Erskine had left it off; but it was all in vain, and, after a stormy discussion of twenty-five days in the House of Representatives, it was determined, by a great majority, to break off all communication with the British envoy; and Mr. Pinkney, the American envoy in London, was directed to request the recall of Mr. Jackson, whose firmness the American Government found themselves unable to overcome; and this was at once acceded to by the British administration."

10 Alison's History of Europe, 651 *ff.*

As to this statement it may be remarked:

(1) Mr. Jackson's reception was one of peculiar consideration. Mr. Madison was then at Montpelier, his country residence; but he directed that a barge, duly manned, should be sent from Washington down the Potomac to bring Mr. Jackson to the city more expeditiously than could be done by the packet by which he was to have come up from Norfolk. Mr. Madison, as we learn from the private correspondence on file at the Department of State, transmitted, through Mr. Smith, Secretary of State, to Mr. Jackson, cordial expressions of regret that he was obliged to be absent from Washington at the time of Mr. Jackson's arrival, inviting, in terms of great friendliness, Mr. Jackson to visit Montpelier. Mr. Jackson acknowledges this in one of those singular letters he wrote to his family shortly after his arrival—letters of vainglorious satisfaction at the attention paid him and of condescending contempt for the Government by whom those attentions were paid. It was not unnatural it should have been so. The desire on the part of Mr. Madison, always placable and gentle, to avoid a rupture with Great Britain was then, as we now know, very strong. Mr. Smith, Secretary of State, was, as connected with a large commercial house, enlisted by interest in the same policy; and Mr. Gallatin, whose influence in the

Cabinet far transcended that of his associates, was devoted to the maintenance of peace, which was at once a part of his political philosophy and essential to his financial schemes. But while the zeal shown to conciliate Mr. Jackson was not unnatural, it is not surprising that he should have detailed to his family the exhibition of this zeal with self-complimentary complacency. Ministers from the United States of no little eminence had visited London prior to Mr. Jackson's mission. Mr. John Adams, at the time the leading statesman of his country, had gone there as its first envoy, and had been received with surly neglect, and placed, as he tells us, in social ostracism. Mr. Jay, Mr. T. Pinckney, Mr. Monroe, and Mr. William Pinkney, men of singular courtesy, cultivation, and dignity, were certainly not met in advance with barges on the Thames to make more comfortable their passage over that river, nor do their letters tell us of any marked social courtesies bestowed on them by members of the Government. Part of the remembrance of this may have led Mr. Jackson, familiar as he was with the annals of British diplomacy, to narrate to his family with peculiar zest the honors, almost obsequious as he describes them, which were showered on him when he reached Washington. While this, however, need not surprise us, we would be entitled, from what we now know of the facts, to be surprised that, after his "Copenhagen" menaces had provoked the rebuff due them, and after the charge, made by him against the Administration, of falsehood and duplicity, had been met by a refusal to hold further intercourse with him, even he should have had the audacity to tell his Government that he had been received at Washington with rudeness and insult; that he was in danger from the Washington "mob," and that the tone of society there was so low that he and his wife could no longer abide it, but must move the legation to New York.

(2) The "President's table" is referred to by Sir A. Alison as the scene "of marked indifference, if not of studied insult," to Mr. Jackson, and from this table "to the lowest ale-house in the United States," we are told, "there was nothing but one storm of indignation," &c. No doubt this is what Mr. Jackson told his Government after his dismissal; but his letters, written to his family at the time of his reception, and before his misconduct led to his dismissal, show that this statement was untrue. In the next section will be given Mr. Jackson's contemporaneous account of his reception at the "President's table," and of the contemptuous conceit with which he received on his first visit to Mr. Madison the simple hospitalities which it was natural for Mr. Madison, as a quiet, unostentatious, and unaffected Virginia gentleman, to pay. Mrs. Madison's singular grace and dignity, of which few observers but Mr. Jackson were unconscious, he indeed does not notice in the letter written by him immediately on his first visit; but he regales his family with a statement about her early life, which, false as it is, is too base to be here repeated. He goes with his wife, however, to dine with Mr. and Mrs. Madison, and the honors there paid him he dilates on (*infra*, § 107*a*) in a detail which shows how without foundation are his subsequent fabrications about insults at the "President's table." When the equally famous dinner invitation was tendered Mr. Merry, Mr. Jefferson's daughters were absent, and Mr. Jefferson gave only informal dinners, following the French usage under such circumstances which prevailed when he was at Paris. There was no "lady," therefore, "at the table" for Mr. Merry to "take in." When Mr. Merry demanded that the attention of precedence should be paid him it

was impossible to accede to his demand, as otherwise he would have had to walk in advance with Mr. Jefferson, leaving his own wife behind. Aside from this, it was impossible for Mr. Jefferson, either as President or as a gentleman in his own house, giving an informal entertainment, to admit a claim to arrange the order of his table, made by the British minister as a matter of right. So it was that the request to give Mr. and Mrs. Merry precedence at Mr. Jefferson's table was declined, as will be presently noticed more fully, and this was reported to the British Government, and dwelt upon by English writers, as a mark of disrespect and a cause of grievance. Mr. Madison recollected this well, and, Mrs. Madison being at his side to help him, he took pains, in his own simple and kindly way, to arrange matters so as to avoid the prior difficulties. The second "dinner arrangement," which was to take so conspicuous a part in our diplomatic relations with Great Britain, was then made in such a way as to give Mr. and Mrs. Jackson the position they claimed—Mrs. Madison leading Mr. Jackson, Mr. Madison Mrs. Jackson; which distinction Mr. Jackson, as we will presently see (*infra*, § 107*a*), dwells on with satisfaction in a letter written to his family immediately after the event, not refraining from mentioning how much more successful his "diplomacy" had been in this respect than that of Mr. Merry, nor from intimating that Mrs. Merry's origin was such as to place her under some sort of stigma, which may have been the cause, he may have desired to suggest, why, even at Washington, precedence was not allowed to her. But however this may be, Mr. Jackson's subsequent statements of "insults at the President's table," sent by him to the British Government and adopted by British historians, are shown to be untrue by his own family letters contemporaneous with the event. That they were from the nature of things untrue, no one ever has doubted who is familiar with the simple but gracious and uniformly considerate manners of Mr. and Mrs. Madison and the refined and studied courtesy of Mr. Gallatin, who was Mr. Madison's chief friend and adviser, and who from his gentle birth and training at Geneva was at least as competent as Mr. Jackson to decide questions of social bearing.

(3). The personal indignities at Washington claimed by Mr. Jackson to have been received by him, have been already noticed (*supra*, § 94). The upshot of these was that Mr. Jackson attempted to bully and browbeat the Government, that he was told that after such an insult no further intercourse could be held with him, and that he at once announced that he would move the legation to New York. It is not true that he met with any indignities at Washington beyond this merited refusal by the members of the Administration, and of its leading supporters, to associate with him personally, or to receive any further communications from him. There was no complaint whatever made by him of such indignities until after this repulse. There is no country in which diplomatic immunities are so highly regarded as in the United States. There are no courts which, as we have seen (*supra*, § 92), place so strong a guard on these immunities as the courts of the United States, Federal and State. No rulers have ever lent a more attentive ear and extended a prompter arm to bring offenders in such cases before the courts than the successive Presidents of the United States. Mr. Jackson, as an experienced diplomatist, must have been aware how often foreign ministers in London had appealed, sometimes ineffectively, for the protection of the British authorities. He could not, also, have been unconscious of the masterly skill as well as quiet courage with which, as the

highest English authorities on international law now concede, had been discharged the international duties of the successive Administrations of the United States down to the period of his arrival. He must have known that if any indignities had been offered to him or his legation it was only necessary for him to state the fact to the Secretary of State in order to obtain redress. He made no such statement, because there was no such indignity offered to him. He withdrew from Washington when his intolerable insolence made it impossible for the Government to deal officially with him, and when, incensed as were the publicists and statesmen of the continent of Europe at his overbearing conduct at Copenhagen, as well as at the arbitrary and arrogant tone assumed by his Government even to those European powers with which it was at peace, he found at Washington no defenders among the diplomatic corps. He left his post partly because in a place consisting almost entirely of official society he thus isolated himself and terminated his relations with the Government, and partly because, to his peculiar comprehension, such a departure was to be regarded, as his departure under similar circumstances from Copenhagen had been, as a final threat of the swift punishment he expected his Government to inflict. But the falsity of the pretext he afterwards set up of indignities offered to him by Washington "mobs" is shown, not merely by the circumstances of the case which made, as we will presently see, such "mobs" impossible, but by the fact that at the time he neither mentioned them to his family, in the copious correspondence he maintained with them, nor asked of this Government protection from them. The only complaint bearing on the subject that is discoverable is the following:

"As Mr. Jackson has been already once most grossly insulted by the inhabitants of the town of Hampton, in the unprovoked language of abuse held by them to several officers bearing the King's uniform, when those officers were themselves violently assaulted and put in imminent danger," he requests a passport for himself and family.

Mr. Oakley, British Sec. of Legation, to Mr. Smith, Sec. of State, undated (received Nov. 11, 1809). 3 Am. St. Pap. (For. Rel.), 319.

If the anecdotes told in Mr. Jackson's family letters of Mr. Oakley's inefficiency and absurdity are to be relied on, Mr. Oakley's statements are not to be regarded as high authority. But giving this solitary complaint which was made by the British legation of insults to Mr. Jackson (sent, also, after Mr. Jackson's dismissal), its utmost signification, it reduces the insults to "unprovoked language of abuse" held by "several" "of the inhabitants of the town of Hampton" (a little fishing village in Virginia near the mouth of the James River) "to several officers bearing the King's uniform," abuse of these officers being by construction abuse of Mr. Jackson, who was not within an hundred miles of the place. Mr. Jackson, having previously been dismissed from Washington, asked, upon this "insult," "his passport." But what for? To leave the country? To do this he had no intention. His "passport" was to take him to Philadelphia or New York, there to set up his legation as a center of hostile operations by acting on parties whom he supposed disaffected to the Government.

So far as Washington is concerned, the pretense set up afterwards by Mr. Jackson to cover his retreat, that it was governed by a "mob," who threatened him with personal violence, is absurdly untrue. Washington was at the time, as he himself in his family letters declares, a mere hamlet, and in such a hamlet, a day's long journey even from

Baltimore, no mob could be collected for any purpose whatsoever. Nor, if "mobbing" was to be done, would anything be more unlikely than that the British minister should have been selected as its victim. The Federalists in Congress, though not numerous in those days, attacked the Administration with a virulence almost without parallel in our history; and it is sufficient to read Mr. Quincy's speech on Mr. Jackson's mission to see that if there had been any danger of insult to be feared, that danger was to have been feared by Mr. Quincy and those who sustained him in his vehement assaults on the Administration, and not by Mr. Jackson, whose misdeeds were covered by the veil of diplomatic confidence. But there was no danger of personal insult to any one. The fault of the Administration was not undue belligerent animosity, but undue pacific tendencies toward Great Britain, and so Mr. Quincy admitted, when he declared in Congress, in words which show how tolerant was public sentiment, that the submissiveness of the Administration to Great Britain was such that it could not "even be kicked into a war." It is not necessary to ascribe Mr. Jackson's flight from Washington to fear. It was probably partly in anger, partly in conformity with the "Copenhagen" precedent, as above noticed. But a hasty and angry departure there was, and a removal "of the legation to New York," preceded by a sort of political progress through Baltimore and Philadelphia, where, according to his own account and that of his wife, so far from being met with insults (though there at least he was in cities where mobs were possible), he and his family were overwhelmed with even oppressive hospitalities. After these alleged ovations he moved to New York and Boston, where similar receptions he declared awaited him. When he arrived at Boston he was entertained by the extreme Federalists, then, according to Mr. J. Q. Adams, brooding over schemes of disunion, at a dinner in which he gave a toast so flagitiously insolent to the Government that Mr. Madison was compelled to direct that his recall should be immediately demanded. Sir A. Alison thinks that this was one of the causes of the war of 1812. The dismissal by itself was not such a cause, for it was justly merited. But the announcement of the British Government that it saw no reason to be displeased with Mr. Jackson's conduct should have been met by the Government of the United States with a demand for a retraction, the refusal of which to have been followed by a declaration of war, anticipating by three years that of 1812. Had a minister, accredited by the United States to the British Government, begun his work by dictating to the head of that Government in what way he was to be socially entertained; had he started off on his diplomatic career by charging that Government with falsehood and duplicity in its prior negotiations; had he admitted, when this was gravely pointed out to him, that such was his intention, and repeated the offense; had he declared, when further intercourse with him was refused, that he would no longer remain at the seat of Government, and, supposing the seat of Government was then at some secluded village, announced that he left from fear of "the mob;" if, after such a departure, and after being requested to leave the country, instead of doing so he had gone on a progress through a series of cities, in which alone "mobs" could have been collected, exciting opposition to the Administration and giving "toasts" insulting it; if, after the Government of the United States had been informed of this conduct, it had indeed recalled the minister, but announced that it saw nothing in his proceedings to disapprove of; if such should have been the course taken by the United States to Great Britain, the reply would have been "you must

apologize for insults so flagrant and for actions so derogatory to our position as a great power, claiming at least equality with any power on the globe. You must not only recall your minister but you must disavow his proceedings."

That this course was not taken by Mr. Madison is to be explained by his constitutional aversion to war, strengthened by the conviction which he had inherited from Mr. Jefferson, and which was shared by Mr. Gallatin, his chief adviser, that war, in itself, a great evil, would be peculiarly so when waged by the United States, with resources as yet imperfectly developed, with a coast as yet unfortified, with a navy as yet in embryo, against Great Britain, then unchallenged sovereign of the seas, to whom, in spite of the hardness and arrogance of her treatment of her colonies, which Burke had so vividly described, and which continued to mark her demeanor to the United States, a large portion of the country still looked with an affection which even two wars have not been able yet to extinguish. But more than any purely personal affair since the Revolution did Mr. Jackson's conduct in his mission and its approval by the British Government tend to render the preservation of peace difficult, and this detailed notice of his mission may be of service in this place for the purpose of illustrating the importance in diplomatic intercourse of courtesy, of candor, of truthfulness, of manly courage and dignity, and of scrupulous avoidance of interference in the domestic politics of the country of residence. It is fortunate that the recent ingenuous publication of Mr. Jackson's family correspondence, and the possession by the Department of State of the private papers of Mr. Jefferson, Mr. Madison, and Mr. Monroe have brought to light the true circumstances of Mr. Jackson's dismissal—a dismissal which was made by the British administration at the time, as well as by British historians subsequently, a ground for grave complaint against the United States. The dismissal was a necessity; the approval of his conduct by Great Britain was an insult which no high-spirited nation should have tamely borne.

The change produced by the war of 1812 in the tone of the British ministers at Washington is very marked. "Their first war with England," said the London Times in April, 1817, speaking of the United States, "made them independent; their second made them formidable." (3 Schouler, U. S., 22.) With this consciousness on the part of England, the English attitude to the United States underwent a change. Bagot, who was the first permanent minister after the war, was not merely an experienced practical diplomatist, but a man of kindly temper, of considerate manners, and of a social position at home so high as not to make him think it necessary to set up pretensions to superiority when abroad. He was assisted also by a wife whose attractiveness and good sense added greatly to his popularity in all quarters. Under the era of ministers which thus began the diplomatic relations between the countries were freed from those irritating elements by which they had been disturbed prior to the war.

Of the ministers who served the United States in London in those troubled days it may at least be said that they were not only well versed in that system of international law in relation to neutral rights, in formulating which the United States is now universally acknowledged to have taken the lead, but that they were men of marked dignity and courtesy, on whom even the most supercilious critic could make no personal criticism and to whom no one of the British secretaries with whom they did business imputed any personal fault. Of Mr. Jay and of Mr.

Thomas Pinckney it is scarcely necessary to say that men of higher tone, of more simple truthfulness, of more delicate sense of honor, could not be found. Of Mr. Monroe and Mr. William Pinkney, whose misfortune it was to negotiate a treaty with Great Britain which Mr. Jefferson when President declined to accept, on the ground that it left the chief causes of difference still open (see *infra*, § 150*b*), a few words may be here hazarded. Mr. Monroe has had a singular place in the opinion of his countrymen. He has always been regarded as a man of marked simplicity, exact truthfulness, great generosity, and a high sense of honor. He was the last officer of the Revolutionary war to fill a high civil station; he was the last of the illustrious line of the Virginia Presidents; he closed this lineage by a career distinguished, like that of his predecessors, by dignity, by official purity, by unsectional patriotism, and by unflinching fidelity to duty. He had not, like Washington, the opportunity to exhibit that majestic fortitude and wise leadership which enabled Washington to overthrow an old government by which order and liberty were imperiled, and to establish a new government in which order and liberty were to be established. He had not that political genius which enabled Jefferson to forestall the future, nor, while accepting Jefferson's principles, could he present them with Jefferson's buoyant and fascinating enthusiasm; he had not Madison's power of calm judicial statement; but he combined, as became the last of that remarkable series of statesmen, some of the best qualities of each. It is true that when in the Senate during Washington's administration he opposed that administration in its foreign policy, and incurred Washington's displeasure. But in his old age his earlier affection towards his former chief revived. With Washington, in fact, he had much in common. Like Washington, and unlike Jefferson, he did not, by his personal genius, impress his views on his Cabinet, but, collecting statesmen of ability of different schools, he sought not merely to harmonize their counsels, but by patiently weighing these counsels when conflicting to arrive at a just and wise conclusion of his own. To Jefferson's distinctive principles of liberalism he always remained faithful as a disciple, though it would not have been his nature to have originated them as a chief. His style in his political papers was unassuming and plain, and sometimes, like that of Washington, inelegant and labored, wanting Jefferson's felicity and Madison's exact lucidity. In his bearing and social usages as President he followed Washington much more closely than he followed Jefferson or Madison; his manner became, as he grew older, more formal and reserved; his diplomatic experience, in particular, as well as the difficulties of his immediate predecessors, taught him how great were the embarrassments arising from familiar conversation between the Chief Executive and foreign ministers. This dignified reticence he gradually applied to his intercourse with all public men, outside of his Cabinet. Not a cloud ever fell on his fair fame. Of him, as well as of his predecessors in that illustrious succession, it could be said that with the opportunities of wealth showered on them, public life was to them the cause of pecuniary loss, not of gain; and in his own particular case it is well known that his hospitality when minister abroad, and afterwards at Washington, involved him in expenses so much in excess of his salary as to absorb his modest patrimony. (See *infra*, § 107*a*.) Of neither him or them, also, could it be said that political patronage was used to favor relatives or to pay personal services.

During Washington's administration Monroe's affections were known

to turn strongly toward France, which his conduct toward that Government when minister at Paris was supposed to have unduly displayed; negotiations into which he had entered with France were disavowed, and he was recalled in a manner marking strong disapprobation. That this was in a large measure undeserved subsequent developments have shown; but be this as it may, his next appearance in the diplomatic field was marked by a singular triumph. Upon the question of the comparative efficiency of Mr. Monroe and of Mr. R. Livingston in the Louisiana negotiation—a question afterwards so much debated—it is not necessary now to enter; it is enough to say that the negotiation faltered until Monroe's arrival at Paris, and that it was under the finishing touch given by him, at a period when Napoleon was forced to cede Louisiana or to run the risk of losing it altogether in the war about to reopen, that the purchase of that splendid province was effected. Before this Mr. Monroe had been looked upon as a destructive, and on him the peculiar enmity of the opposition had been poured. The Louisiana treaty showed in him great constructive powers; in his negotiations with Great Britain, so far from indicating undue prejudice against that haughty power, his course was marked not only by the courtesy and simplicity which under no circumstances did he lose, but by concessions to Great Britain which, as has been said, wise as they may have been, went as far in some respects as did Mr. Jay's treaty, and went too far to be accepted by Mr. Jefferson. During the greater part of Mr. Madison's administration he was Secretary of State; during the whole of his own administration he revised every important dispatch sent out by Mr. Adams, Secretary of State, and, as we learn from Mr. Adams's diary and from the drafts still existing in the Department of State, modified them so as to adapt them to his own scheme of foreign policy. He conducted the foreign affairs of the United States, therefore, for a longer period than has any other of our statesmen, and he conducted them with great success through great vicissitudes.

At the beginning of his political career he was looked upon by the more sober part of the community as a reckless revolutionist. During his Presidency he was regarded by men of bold thought as a cautious conservative. He was the only President except Washington whose re-election was unopposed. Since his death it has been the fashion to speak of him as destitute of force; but as to the ability and strength of will shown by him it is only necessary to repeat what was said of him by both Mr. Calhoun and Mr. Adams, that among all the public men with whom they had dealt he most perfectly united conscientiousness, courtesy, thorough knowledge of foreign political conditions, high patriotism, national spirit, sound judgment, patient industry in mastering details, with resolute maintenance of purpose. So far as concerns the negotiations with England while he was minister there, it may be truly said, after an examination of the large correspondence relating to that era, now accessible, that not only is there not one word coming from either side in those heated controversies which should lead a citizen of the United States to look on him otherwise than with pride, but that in ability, candor, and fairness, Mr. Monroe's papers stand in the front rank of diplomatic documents.

These remarks in respect to Mr. Monroe may not appear too discursive when it is recollected that of the servants of the public he is to be looked back upon as the one who was longest, as minister, Secretary, and President, connected with this Department, and that in it, in the shape of the papers left by him, still exists, unveiled, his monument; and it may

thus not be out of place to say how fully, in connection with the documents published in these volumes, these papers testify to his high honor, his wise statesmanship, his steady faith in liberal institutions, his devotion to his country as a whole, and his perfect disinterestedness and purity as a public man.

Mr. Pinkney, who bore, first with Mr. Monroe and then alone, the difficult and ungracious burden of those eventful negotiations, was, as a lawyer, recognized, not merely by the body of the bar but by Chief-Justice Marshall and Judge Story, as at the head of his profession, both as an orator and a jurist; and international law had been regarded as the field in which he was peculiarly master. He was well fitted, by his courtesy and tact, for diplomatic intercourse. So far from being embarrassed by any national antagonism to England, the only criticism made by him in this respect was that sometimes suggested by his countrymen, that he was so thoroughly English in his habits as to yield too much socially to English pretensions. But he yielded nothing in his public relations. Scrupulously courteous he always was; but nowhere are the arguments for the positions taken by the United States on the pending issues more forcibly put than in those emanating from his pen.

It may be said that in this notice of the diplomatic treatment of the United States by Great Britain prior to the war of 1812 the ungracious attitude of Great Britain is brought out in undue prominence, while the ungracious attitude of France is left out of sight. But there is this material difference. France wished the United States to become a great nation. Great Britain, not yet recovered from the humiliation of the Revolutionary war, would gladly have reduced the United States to the servility of a dependent. France took with us the liberties of an affectionate but somewhat extravagant friend. Great Britain, not yet convinced of the permanence of our independence, maintained towards us the attitude of an offended guardian, whose title to obedience remained although his power was temporarily thrown off. France looked on the United States with pride, as a nation which she had aided in bringing into existence; Great Britain looked on the United States with anger and aversion, as a colony which had ungratefully flung off her protecting hand, and aided in inflicting on her a crushing defeat. Undoubtedly Genet was absurdly disrespectful, but his disrespect was of a character utterly different from the sulky repulsiveness of Hammond, the random impertinence of Merry, the calculated insolence of Jackson. Genet rushed into the country with his arms open for an embrace, ready to enter into any alliance we might propose, no matter how close; Hammond stood moodily with his hands behind him, refusing even to answer the most conciliatory business notes. Genet was offended because the nation did not exist in a continuous fête devoted to liberty; Hammond was offended because the nation existed at all. Genet would have adorned the nation with liberty caps and with floral symbols of emancipation that might have appeared absurd. Hammond would have subjected it once more, at least in its foreign politics, to the yoke of Great Britain. Genet, when the guarantee by the United States of France's West India possessions was brought to his notice by Jefferson, with the statement that this guarantee was one the United States had not the means to execute, said at once that it would be released by France. When Hammond was remonstrated with for the detention by Great Britain of Niagara, of Oswego, of Fort Erie, of Michilimachinaw, of Detroit, and the adjacent territory, in defiance

of treaty, and for the incitement by British emissaries to prey on our settlements, he remained defiantly silent. Genet was sometimes ridiculously annoying and familiar, but this was amply atoned for by his recall, and by the statement of the French directory that if he remained in the country we might punish him as we chose. Hammond retained to the end his contemptuous seclusion, rejecting hospitality and refusing to explain grievances, and in this course, directed by his Government, his Government sustained him. Revolutionary France treated us with the ardor and freedom with which one nation, not a little demonstrative, just liberated from a heavy yoke, would be likely to treat another a little its senior in the work of emancipation. To reactionary Great Britain we still appeared as a rebellious dependent, to whom the attitude of domineering superiority was to be maintained. It is true that afterwards, when the French Government progressed in its tremendous conflict with Great Britain, it authorized outrageous spoliations on our commerce and treated with no little disrespect our ministers whom we sent to call for redress. (See *supra*, §§ 83, 84; *infra*, §§ 148 *ff.*, 228.) Great Britain also did the same. But there was this difference. The spoliations of France were paid for, those before 1800 in the cession of Louisiana, those afterwards very tardily, it is true, but at last satisfactorily by treaty under Louis Phillippe (see *infra*, § 318). Those of Great Britain after 1798 were never paid for, and the claims were wiped out in the war of 1812. France, also, under the directory, withdrew from her isolation, and proposed to receive our ministers with the respect due the envoys of a great and independent nation (see *supra*, §§ 83, 84, 85; *infra*, § 148 *ff.*). Whatever may have been the insults offered to us by British ministers, Great Britain, while, as in the case of Jackson, accepting a dismissal, approved of the misconduct which required it. Even when in the Napoleonic wars we were exposed to almost equal aggressions from the two great contending powers, there was the same contrast in diplomatic tone. The selfish greed of Talleyrand was veiled in courtesy and respect; advances from Great Britain, equally selfish, though meant to be friendly, were embittered by Wellesley's nonchalent superciliousness or Canning's elaborate sneers. Nor was it unnatural that it should have been so. The peace policy of Jefferson and Madison, necessary as it may have been at the time, had nothing in it to break the illusion of Great Britain that her old colonies were still more or less subject at least to her overwhelming supremacy on the sea. It took the war of 1812 to destroy this last pretense of retention of her old authority, and to place the diplomatic relations of the two powers on that basis of mutual respect and courtesy on which they have ever since remained.

As to Mr. Jackson's dismissal, see further, § 84.

"The Danish convention was the pioneer treaty for indemnities resulting from maritime spoliations, growing out of the 'continental system.' That the success of the negotiation was, in a great degree, to be attributed to the personal character and special qualities of Mr. Wheaton cannot be doubted by any one who reads the passages which we have cited from eminent publicists. An American Senator ascribes the result to the fact that President Jackson, disregarding in his case the mischievous system which treats all public offices, at home and abroad, as mere rewards for partisan services, and distributes them without inquiry as to the peculiar qualifications of the candidates, 'did not change

the negotiator—did not substitute a raw for an experienced minister.' (Benton's Thirty Years' in the Senate, vol. i, p. 603.)"

Lawrence's Wheaton (ed. 1863), 871.

"That diplomacy has been deeply tainted with the vices of dissimulation and falsehood is certain. Secret treaties, and still more secret articles annexed to published treaties, are in the nature of lies; for a treaty is essentially a public engagement, and to publish a part as the whole, keeping the remainder undisclosed, is to palm off an imposition upon Europe. And yet the arguments for truth and openness in international affairs are plain and irresistible. Without them there can be no confidence, and on the confidence which a diplomatist inspires his whole success depends. * * * 'In politics,' said Segur, 'and in stormy times, the true dexterity is a courageous good faith. Character saves men from the dangers on which subtlety makes shipwreck, and firm sincerity alone can give solidity to success or dignify misfortune.' 'It is scarcely necessary to say,' wrote Lord Malmesbury, among the suggestions which, late in life, he sent to a young man just entering the profession, 'that no occasion, no provocation, no anxiety to rebut an unjust accusation, no idea, however tempting, of promoting the object you have in view, can need, much less justify, a falsehood. Success obtained by one is a precarious and baseless success. Detection would not only ruin your reputation forever, but deeply wound the honor of your court. If, as frequently happens, an indiscreet question which seems to require a distinct answer is put to you by an artful minister, parry it either by treating it as an indiscreet question, or get rid of it by a grave and serious look, but on no account contradict the assertion flatly if it be true, or admit it if false and of a dangerous tendency.'"

Bernard on Diplomacy, 127.

As to importance of American diplomacy, see 22 Atlantic Monthly (1868), 348. Address by Mr. R. H. Dana, 20 Scribner's Mag., 616 (1880).

"In the ceremonies on all formal occasions the diplomatic agent will be governed by the established usage of the country of his official residence. There is usually at foreign courts an officer having charge of such ceremonial matters, and it may often be advisable to confer with him informally in order to insure appropriate conformity to established rules.

"There is also in each country an established rule as to official calls. The diplomatic agent should, immediately upon his arrival, inform himself upon this subject, and conform strictly to the rule.

"If the legation be provided with a secretary, the newly-arrived diplomatic agent should be accompanied by him in the official ceremony of presenting credentials, and in his subsequent official visits to his colleagues.

"A legation is not under the same necessity of displaying a coat of arms and raising a flag as a consulate; but it is in most capitals customary to place an official shield above the principal entrance of the diplomatic agent's residence, or the offices of the legation when these are separate from his residence, with a short flag-staff set above the shield, on which to display the United States flag on occasions of special ceremony, such as the Fourth of July and Washington's Birthday, and also, by way of courtesy on any national celebration in the country where the legation is situated."

Printed Pers. Inst., Dip. Agents, 1885.

(2) SOCIAL INTERCOURSE.

§ 107a.

"We went up to dinner. I went up with the comte alone. He showed me into the room where were the ladies and the company. I singled out the countess, and went up to her to make her my compliments. The countess and all the ladies rose up. I made my respects to them all, and turned round and bowed to the rest of the company. The count, who came in after me, made his bows to the ladies, and to the countess last. When he came to her he turned round and called out, 'Monsieur Adams, venez ici, voilà la Comtesse de Vergennes.' A nobleman in the company said, 'Mr. Adams has already made his court to Madame la Comtesse.' I went up again, however, and spoke again to the countess, and she to me. When dinner was served the comte led Madame de Montmorin, and left me to conduct the countess, who gave me her hand with extraordinary condescension, and I conducted her to table. She made me sit next to her on her right hand, and was remarkably attentive to me the whole time. The comte, who sat opposite, was constantly calling out to me to know what I would eat, and to offer me *petits gateaux*, claret, and Madeira, &c. In short, I was never treated with half the respect at Versailles in my life.

"In the ante-chamber, before dinner, some French gentlemen came to me and said they had seen me two years ago; said that I had shown in Holland that Americans understood negotiation as well as war. The compliments that have been made me since my arrival in France upon my success in Holland would be considered as a curiosity if committed to writing. 'Je vous felicite sur votre succès' is common to all. One adds: 'Monsieur, ma foi, vous réusse bien merveilleusement. Vous avez fait reconnoître votre indépendance; vous avez fait un traité, et vous avez procuré de l'argent. Voila un succès parfait.' Another says: 'Vous avez fait des merveilles en Hollande; vous avez culbuté le Stathouder et le parti Anglois; vous avez donné bien du mouvement, vous avez remué tout le monde.' Another said: 'Monsieur, vous êtes le Washington de la négociation.' This is the finishing stroke. It is impossible to exceed this. Compliments are the study of this people, and there is no other so ingenious at them."

Mr. Adams' Diary, Nov. 10, 1782. 3 John Adams' Works, 306.

"The Vice-President has the honor to present his humble opinion on the points proposed for his consideration.

"1. That an association with all kinds of company, and a total seclusion from society, are extremes which, in the actual circumstances of this country, and under our form of government, may be properly avoided.

"2. The system of the President will gradually develop itself in practice without any formal communication to the legislature or publication from the press. Paragraphs in the public prints may, however, appear from time to time, without any formal authority, that may lead and reconcile the public mind.

"3. Considering the number of strangers from many countries and of citizens from various States who will resort to the seat of Government, it is doubted whether two days in a week will not be indispensable for visits of compliment. A little experience, however, will elucidate this point.

"4. Under the fourth head it is submitted to consideration whether all personal applications ought not to be made, in the first instance, to a minister of state. Yet an appeal should be open, by petition, to the President, who, if he judges the subject worthy of it, may admit the party to a personal interview. Access to the supreme magistrate ought not to be rigorously denied in any case that is worthy of his consideration. Nevertheless, in every case the name, quality, and, when these are not sufficient to raise a presumption in their favor, their business ought to be communicated to a chamberlain or gentleman in waiting, who should judge whom to admit and whom to exclude. Some limitation of time may be necessary, too—as, for example, from eight to nine or ten—for, without it, the whole forenoon, or the whole day, may be taken up.

"5. There is no doubt that the President may invite what official characters, members of Congress, strangers, or citizens of distinction he pleases in small parties without exciting clamors, but this should always be done without formality.

"6. The entertainments mentioned in this article would much more properly be made by a minister of state for foreign or domestic affairs, or some other minister of state, or the Vice-President, whom, upon such occasions, the President, in his private character, might honor with his presence. But in no case whatever can I conceive it proper for the President to make any formal public entertainment.

"7. There can be no impropriety in the President's making or receiving informal visits among his friends and acquaintances at his pleasure. Undress, and few attendants, will sufficiently show that such visits are made as a man, a citizen, a friend, or acquaintance. But in no case whatever should a visit be made or returned in form by the President, at least, unless an Emperor of Germany or some other sovereign should travel to this country. The President's pleasure should absolutely decide concerning his attendance at tea-parties in a private character, and no gentleman or lady ought ever to complain if he never, or rarely, attends. The President's private life should be at his own discretion, and the world should respectfully acquiesce. As President he should have no intercourse with society but upon public business or at his levees. This distinction, it is with submission apprehended, ought to govern the whole conduct.

"8. A tour might, no doubt, be made with great advantage to the public if the time could be spared, but it will naturally be considered, as foreign affairs arrive every day, and the business of the executive and judicial departments will require constant attention, whether the President's residence will not necessarily be confined to one place."

Vice-President Adams to President Washington, May 17, 1789. 8 John Adams' Works, 491.

As to precedence at dinners, see 3 John Adams' Works, 122, 127, 276, 305.

"I can truly say I had rather be at Mount Vernon, with a friend or two about me, than to be attended at the seat of Government by the officers of state and the representatives of every power in Europe.

"These visits are optional. They are made without invitation. Between the hours of 3 and 4 every Tuesday I am prepared to receive them. Gentlemen, often in great numbers, come and go, chat with each other, and act as they please. A porter shows them into the room, and they retire from it when they please, and without ceremony. At their first entrance they salute me, and I them, and as many as I can talk to

I do. What pomp there is in all this I am unable to discover. Perhaps it consists in not sitting. To this two reasons are opposed: first, it is unusual; secondly, which is a more substantial one, because I have no room large enough to contain a third of the chairs, which would be sufficient to admit it. If it is supposed that ostentation or the fashions of courts (which, by the by, I believe originated oftener in convenience, not to say necessity, than is generally imagined) gave rise to this custom, I will boldly affirm that no supposition was ever more erroneous; for, if I were to give indulgence to my inclinations, every moment that I could withdraw from the fatigue of my station should be spent in retirement. That it is not, proceeds from the sense I entertain of the propriety of giving to every one as free access as consists with that respect which is due to the chair of Government. And that respect, I conceive, is neither to be acquired nor preserved but by observing a just medium between much state and too great familiarity."

President Washington to Mr. Stuart, June 15, 1790. 10 Washington's Writings, 100.

"At a distance from the theater of action truth is not always related without embellishment, and sometimes is entirely perverted from a misconception of the causes which produce the effects that are the subjects of censure. This leads me to think that the system which I found it indispensably necessary to adopt on my first coming to this city might have undergone severe strictures, and have had motives very foreign from those that govern me assigned as causes thereof. I mean, first, returning no visits; secondly, appointing certain days to receive them generally, not to the exclusion, however, of visits on any other days under particular circumstances; and, thirdly, at first entertaining no company, and afterwards (until I was unable to entertain any at all) confining it to official characters. A few days evinced the necessity of the two first in so clear a point of view that, had I not adopted it, I should have been unable to attend to any sort of business, unless I had applied the hours allotted to rest and refreshment to this purpose, for by the time I had done breakfast, and thence till dinner, and afterwards till bed time, I could not get relieved from the ceremony of one visit before I had to attend to another; in a word, I had no leisure to read or to answer the dispatches that were pouring in upon me from all quarters."

President Washington to Mr. Stuart, July 26, 1789. 10 Washington's Writings, 18.

"Mr. Merry has been with us some time. He appears to be an amiable man in private society, and a candid and agreeable one in public business. A foolish circumstance of etiquette has caused some irritability in Mrs. Merry, and perhaps himself, but they will find so uniform and sincere a disposition in all connected with the Government to cultivate a cordial society with them, and to manifest every proper respect for their character and station, that if any unfavorable impression has happened it must be very transient. It would be unfortunate if it were otherwise, because a dissatisfaction of whatever sort, or however produced, might mingle itself with his general feelings, and through them with the agency committed to him."

Mr. Madison to Mr. Monroe, Dec. 26, 1803. MSS. Monroe Pap., Dept. of State.

"Mr. Merry is with us, and we believe him to be personally as desirable a character as could have been sent us. But he is unluckily associated with one of an opposite character in every point. She has already disturbed our harmony extremely. He began by claiming the first visit from the national ministers. He corrected himself in this. But a pretension to take precedence at dinners, &c., over all others is persevered in. We have told him that the principle of society, as well as of Government, with us, is the equality of the individuals composing it, that no man here would come to a dinner where he was to be marked with inferiority to any other, that we might as well attempt to force our principle of equality at St. James's as he his principles of precedence here. I had been in the habit, when I invited female company (having no lady in my family), to ask one of the ladies of the four Secretaries to come and take care of my company; and as she was to do the honors of the table I handed her to dinner myself. That Mr. Merry might not construe this as giving them precedence over Mrs. Merry, I have discontinued it, and here as well as in private houses the *pêle-mêle* practice is adhered to. They have got Yrujo to take a zealous part in the claim of precedence; it has excited generally emotions of great contempt and indignation (in which the members of the legislature participate visibly) that the agents of foreign nations should assume to dictate to us what shall be the laws of our society. The consequence will be that Mr. and Mrs. Merry will put themselves into Coventry, and that he will lose the best half of his usefulness to his nation, that derived from a perfectly familiar and private intercourse with the Secretaries and myself. The latter, be assured, is a virago, and in the short course of a few weeks has established a degree of dislike among all classes which one would have thought impossible in so short a time. Thornton has entered into their ideas. At this we wonder, because he is a plain man, a sensible one, and too candid to be suspected of wishing to bring on their recall and his own substitution. To counterwork their misrepresentations it would be well their Government should understand as much of these things as can be communicated with decency, that they may know the spirit in which their letters are written. We learn that Thornton thinks we are not as friendly now to Great Britain as before our acquisition of Louisiana. This is totally without foundation. Our friendship to that nation is cordial and sincere, so is that with France. We are anxious to see England maintain her standing, only wishing she would use her power on the ocean with justice. If she had done this heretofore other nations would not have stood by and looked with unconcern on a conflict which endangers her existence. We are not indifferent to its issue, nor should we be so on a conflict on which the existence of France should be in danger. We consider each as a necessary instrument to hold in check the disposition of the other to tyrannize over other nations. With respect to Merry, he appears so reasonable and good a man that I should be sorry to lose him as long as there remains a possibility of reclaiming him to the exercise of his own dispositions. If his wife perseveres she must eat her soup at home, and we shall endeavor to draw him into society as if she did not exist. It is unfortunate that the good understanding of nations should hang on the caprice of an individual who ostensibly has nothing to do with them."

President Jefferson to Mr. Monroe, Jan. 8, 1804. (Unofficial.) MSS. Monroe Pap., Dept. of State.

The next step was as follows:

"Thomas Jefferson asks the favor of Mr. Merry to dine with a small party of friends on Monday, the 13th, at half past three.

"February 9, 1804."

Mr. Merry replied at once, saying that he had "engaged some company to dine with him on that day. Under the circumstances, however, he would have informed himself whether it is the usage, as is the case in most countries, for private engagements of every kind to give way to invitations from the Chief Magistrate of the United States; and if such were the usage, he would not have failed to have alleged it as a just apology for not receiving the company he has invited. But after the communication which Mr. Merry had the honor to receive from Mr. Madison on the 12th of last month, respecting the alteration which the President of the United States had thought proper should take place in regard to the treatment to be observed by the Executive Government towards foreign ministers from those usages which had been established by his predecessors, and after the reply which Mr. Merry had the honor to make to that notice, stating that notwithstanding all his anxiety to cultivate the most intimate and cordial intercourse with every (member) of the Government, he could not take upon himself to acquiesce in that alteration, on account of its serious nature, which he would, therefore, report to his own Government, and wait for their instructions upon it; it is necessary that he should have the honor of observing to Mr. Madison that, combining the terms of the invitation above mentioned with the circumstances which had preceded it, Mr. Merry can only understand it to be addressed to him in his private capacity, and not as His Britannic Majesty's minister to the United States. Now, however anxious he may be, as he certainly is, to give effect to the claims above expressed, of conciliating, personally and privately, the good opinion and esteem of Mr. Jefferson, he hopes that the latter will feel how improper it would be on his part to sacrifice to that desire the duty which he owes to his sovereign, and consequently, how impossible it is for him to lay aside the consideration of his public character. If Mr. Merry should be mistaken as to the meaning of Mr. Jefferson's note, and it should prove that the invitation is designed for him in his public capacity, he trusts that Mr. Jefferson will feel equally that it must be out of his power to accept it, without receiving previously, through the channel of the Secretary of State, the necessary formal assurances of the President's determination to observe towards him those usages of distinction which have heretofore been shown by the Executive Government of the United States to the persons who have been accredited to them as His Majesty's ministers.

"Mr. Merry has the honor to request of Mr. Madison to lay this explanation before the President, and to accompany it with the strongest assurances of his highest respect and consideration.

"Washington, February 9, 1804."

To this Mr. Madison replied as follows:

"Mr. Madison presents his compliments to Mr. Merry. He has communicated to the President Mr. Merry's note of this morning, and has the honor to remark to him that the President's invitation, being in the style used by him in like cases, had no reference to the points of form which will deprive him of the pleasure of Mr. Merry's company at dinner on Monday next.

"Mr. Madison tenders to Mr. Merry his distinguished consideration.

"Washington, February 9, 1804."

Mr. Madison thus comments on the above incidents in a letter to Mr. Monroe, then on a special mission to England:

"WASHINGTON, *February* 16, 1804.

"DEAR SIR: In a private letter by Mr. Baring I gave you a detail of what had passed here on the subject of etiquette. I had hoped that no further jars would have ensued, as I still hope that the good sense of the British Government respecting the rights of the Government here to fix its routes of intercourse, and the sentiments and manners of the country to which they ought to be adapted, will give the proper instructions for preventing like incidents in future. In the mean time, a fresh circumstance has taken place, which calls for explanation.

"The President, desirous of keeping open for cordial civilities whatever channels the scruples of Mr. Merry might not have closed, asked me what these were understood to be, and particularly whether he would come and take friendly and familiar dinners with him. I undertook to feel his pulse through some hand that would do it with the least impropriety. From the information obtained, I inferred that an invitation would be readily accepted, and with the less doubt, as he had dined with me (his lady declining), after the offense originally taken. The invitation was accordingly sent, and terminated in the note from him to me, and my answer herewith inclosed. I need not comment on this display of diplomatic superstition, truly extraordinary in this age and in this country. We are willing to refer it to the personal character of a man accustomed to see importance in such trifles, and over cautious against displeasing his Government by surrendering the minutest of his or its pretensions. What we apprehend is, that with these causes may be mingled a jealousy of our disposition towards England, and that the mortifications which he has inflicted on himself are to be set down to that account. In fact, it is known that this jealousy, particularly since the final adjustment with France, exists, or is affected in a high degree, and will doubtless give its color to the correspondence of the legation with its Government. To apply an antidote to this poison will require your vigilant and prudent attention. It can scarcely be believed that the British Government will not at once see the folly committed by its representative, especially in the last scene of the farce, and that it will set him right in that respect. But it may listen with a different ear to the suggestions that the United States, having now less need of the friendship of Britain, may be yielding to a latent enmity towards her. The best of all proofs to the contrary would be the confidential communications you possess, if it were not an improper condescension to disclose them for such a purpose. Next to that is the tenor of our measures, and the dictates of our obvious policy, on an appeal to both of which you may found the strongest assurances that the Government of the United States is sincerely and anxiously disposed to cultivate harmony between the two nations. The President wishes to lose no opportunity, and spare no pains that may be necessary to satisfy the British administration on this head, and to prevent or efface any different impressions which may be transmitted from hence.

"I collect that the cavil at the *pêle mêle* here established turns much on the alleged degradation of ministers and envoys to a level with chargés d'affaires. The truth is, and I have so told Mr. Merry, that this is not the idea; that the President did not mean to decide anything as

to their comparative grades or importance; that these would be estimated as heretofore; that among themselves they might fix their own ceremonies, and that even at the President's table they might seat themselves in any subordination they pleased. All he meant was, that no seats were to be designated for them, nor the order in which they might happen to set to be any criterion of the respect paid to their respective commissions or countries. On public occasions, such as an inaugural speech, &c., the heads of Departments, with foreign ministers, and others, invited on the part of the Government, would be in the same *pêle mêle* within the space assigned them. It may not be amiss to recollect that under the old Congress, as I understand, and even in the ceremonies attending the introduction of the new Government, the foreign ministers were placed according to the order in which their Governments acknowledged by treaties the independence of the United States. In this point of view the *pêle mêle* is favorable both to Great Britain and to Spain.

"I have, I believe, already told you that the President has discountenanced the handing first to the table the wife of a head of Department, applying the general rule of *pêle mêle* to that, as to other cases

"The Marquis d'Yrujo joined with Merry in refusing an invitation. from the President, and has throughout made a common cause with him, not, however, approving all the grounds taken by the latter. His case is, indeed, different, and not a little awkward, having acquiesced for nearly three years in the practice against which he now revolts. Pichon, being a chargé only, was not invited into the pretensions of the two plenipotentiaries. He blames their contumacy, but I find he has reported the affair to his Government, which is not likely to patronize the cause of Merry and Yrujo.

"Thornton has also declined an invitation from the President. This shows that he unites without necessity with Merry. He has latterly expressed much jealousy of our views, founded on little and unmeaning circumstances."

See 2 Madison's Writings, 195.

A letter similar in substance, but of greater length, was sent to Monroe on this subject January 19, 1804.

"Mr. Merry is perhaps kept as yet a little (disturbed) by the scruples of etiquette. I invited him and his lady to make us a visit, and notwithstanding the public (obstacle) interposed by him to official civilities, I should gladly have drawn him into the circle of private hospitality. He has never dropped a word on the subject of etiquette lately. I suspect that his Government has been silent and left him to all the embarrassment resulting from that course. He is at bottom a very worthy man and easy to do business with."

Mr. Madison, Sec. of State (unofficial), to Mr. Monroe, July 21, 1804. Monroe Pap.

"It here occurs to us that we have omitted to mention a circumstance which afforded the subject of much new Federal indignation. We will let Mr. Thomas Moore, the Irish poet, preface it in a passage taken from a letter he wrote to his mother from Baltimore, June 13, 1804, which is published in Lord John Russell's Memoirs, Journal and Correspondence of Moore (vol. i, p. 162).

"'I (writes Moore) stopped at Washington with Mr. and Mrs. Merry for near a week. They have been treated with the most pointed incivility by the present Democratic President, Mr. Jefferson, and it is only the precarious situation of Great Britain which could possibly induce it to overlook such indecent, though at the same time petty, hostility. I was presented by Mr. Merry to both the Secretary of State and the President.'

"The indecent and petty hostility to Mr. and Mrs. Merry was manifested in this wise: They were invited to dine at the President's. When dinner was announced Mr. Jefferson chanced to be standing by and talking with Mrs. Madison at some distance from Mrs. Merry, and he accompanied the former to the table. Mr. Merry regarded this as almost an insult.

"Such a stir was made by the angry embassador that Mr. Madison wrote Monroe (who had succeeded Mr. King as our minister to England), apprising him of the facts, to enable him to answer an expected call of the British Government for official explanation. Monroe, however, got his first information from a friendly British under-secretary, who intimated that he would soon probably hear of the matter through a different channel. The minister was delighted. Within a very short period the wife of an English under-secretary had been accorded precedence over his own, under analogous circumstances. He had no great fund of humor, but the absurdity of the whole affair, and the excellent materials in his possession for a reply to a call for explanations, struck him in a most amusing light. Shaking with merriment, he hinted to his informant the satisfaction the call would give him. He never afterwards heard a lisp on the subject.

"Mrs. Merry tossed her head without shaking the peace of two nations, and poor Mrs. Madison was saved from involuntarily 'firing another Troy.' But Merry never forgot this 'pointed incivility,' though he and his friends knew that, by an express regulation at the White House, all etiquette in respect to official precedence was formally abolished, and though with the most stringent etiquette of the Celestial Empire in force, it would seem an amusing specimen of impertinence for him to claim priority over the Secretary of State of the United States.

"But the farce was not ended. Mrs. Merry thenceforth eschewed the Presidential Mansion; and if her husband went there, it was only officially. After the clamor subsided the President felt a good-natured desire to put an end to this frivolous matter, and to relieve the offended dignitaries from the awkwardness of their position. Accordingly he made inquiry through a common friend (the representative, we think, of the Swedish Government) whether Mr. and Mrs. Merry would accept an invitation to a family dinner. The former was understood to give an affirmative answer, and the invitation was sent, written in the President's own hand. The minister replied by addressing the Secretary of State to know whether he was invited in his private or his official capacity; if in the one, he must obtain the permission of his sovereign; if in the other, he must receive an assurance in advance that he would be treated as became his position. The 'Secretary of State' put an end to the correspondence in a very dry note; and here the affair ended."

3 Randall's Life of Jefferson, 115 *ff.*

"Where you are, although it is not pleasant to fall short in returning civilities, yet necessity has rendered this so familiar in Europe as not

to lessen respect for the person where circumstances do not permit a return of hospitalities."

Mr. Jefferson, President, to Mr. Monroe, minister at Paris, Jan. 8, 1804. Monroe MSS., Dept. of State.

"The gentlemen who composed General Washington's first administration took up universally a feature of general hospitality, which was unnecessary, destructive of business, and so oppressive to themselves that it was among the motives to their retirement. Their successors profited by the experiment and lived altogether as private individuals, and so have ever continued to do. Here (at Washington), indeed, it cannot be otherwise, our situation being so rural that during the vacations of the legislature we shall have no society but of the officers of the Government, and in time of sessions the legislature is become and becoming so numerous, that for the last half dozen years nobody but the President has pretended to entertain them."

Mr. Jefferson, President, to Mr. R. R. Livingston, Dec. 4, 1806. 4 Jeff. Works, 337.

According to Mr. Jackson, in a letter writen by him when British minister at Washington, on October 20, 1809 (Bath Archives, Jackson Correspondence, 2d series, I, 26), "a foolish question of procedure, which ever since Merry's time has been unsettled, and has occasioned some heartburnings amongst the ladies, was decided * * * by the President (Madison), departing from his customary indifference to ceremony and etiquette, by taking Elizabeth (Mrs. Jackson) in to dinner, while I escorted Mrs. Madison." (See also Mr. Jackson more fully, *supra*, § 107.)

In January, 1851, the Brazilian minister, at a non-official dinner party at Mr. Webster's house, was placed at table after Sir H. Bulwer, who, however, had been of later arrival at Washington. The Brazilian minister then addressed a letter to Mr. Webster, which contained the following passage:

"It is a principle established by the congress of Vienna, and adopted by all the civilized nations, even those who were not represented there (as the United States and Brazil), that the precedence between the diplomatic agents of the same capacity must be established only by the priority of the presentations of their credentials. Being yesterday present at your table, the minister of Mexico, I, and the minister of Great Britain, your excellency gave the first places to the minister of Great Britain and his lady, contrary to the rules above mentioned."

This was followed by something of an argument to sustain the position taken.

Mr. Webster's letter was as follows:

"SIR: I have to acknowledge the receipt of your letter of the 25th instant:

"It happens to be my fortune not to be entirely unacquainted with the rules adopted by the treaty of Vienna, respecting the rank of diplomatic agents, and although the Government of the United States was no party to this treaty it has usually conformed to what was then established, as being the regulation prevailing with other states. But the treaty of Vienna, like other treaties, affects only official acts, and does not

assume to give the law to private intercourse; and although I exceedingly regret that anything should have occurred to cause you concern, yet I am sure you will see, upon consideration, that the private hospitality of my own house may be regulated by my own discretion, without being made the subject of diplomatic representation.

"Your obedient servant, etc.

The Brazilian minister in reply accepted this explanation, saying:

"I shall not discuss the distinction established by your excellency between official acts and the private hospitality of the Secretary of State to the diplomatic agents. I rather accept it as saving the principles which seemed to me to be put in doubt on account of the incident then mentioned."

Sir H. Bulwer, being appealed to, sustained the position that "a private party" was to be distinguished from an official ceremony, to which alone treaties could apply."

2 Curtis's Life of Webster, 563–565.

A minister of the United States is required, as far as possible, to cultivate kindly relations with other foreign ministers in the place, and to enter into no controversy with them which could be avoided without loss of personal self-respect and propriety.

Mr. Seward, Sec. of State, to Mr. Webb, Feb. 6, 1863. MSS. Inst., Brazil.

Mr. Schuyler (Am. Diplomacy, 155), says:

"Ceremonial and social duties take up a large part of a minister's time, but those who have been noted as our best and ablest representatives have always been most punctilious in their performance. No man has ever served us better than Mr. John Quincy Adams; and yet we may see from his 'Diary' that night after night he went into society, danced, played cards, talked, and ingratiated himself with the people about him. In spite of certain peculiarities derived from his Puritan ancestry, peculiarities which were sometimes disagreeable when they showed themselves, Mr. Adams was a man not only fond of society, but very popular in society, and, in a word, combined the most useful external diplomatic qualities with those of intellect, study, and experience."

This, however, may, so far as Mr. Adams' diplomatic tone is concerned, be open to question. In one of his confidential letters to Mr. Monroe, when President, he speaks, as is seen, of the softening of his style by Mr. Monroe before his instructions and notes went out. And even when thus modified, the curt style of his diplomatic papers, extraordinarily able as they were, was the subject of much criticism.

"A diplomatic agent should omit no occasion to maintain the most friendly personal and social relations with the members of the Government and of the diplomatic body at the place of his residence; but it is not to be expected that he shall incur onerous charges for hospitality and entertainment.

"While the social relations of a diplomatic agent to his own countrymen resident in or visiting the capital where he resides should be cordial, they have no claim upon his hospitality requiring him to assume expenses or burdens not in accord with his official duties or compensation."

Printed Pers. Inst., Dip. Agents, 1885.

(3) COURT DRESS.

§ 107b.

"From a suitable respect to what is understood to be the usage at the several courts of Europe, requiring the members of the diplomatic body accredited to them to wear a court dress upon established occasions, such as their presentation to the sovereigns, or chief executive officers of these Governments, respectively, &c., the President has thought fit to adopt the following as the dress to be used by our ministers and other diplomatic agents upon all such occasions, which is recommended as well by its comparative cheapness as its adaptation to the simplicity of our institutions, viz:

"A black coat, with a gold star on each side of the collar, near its termination; the under clothes to be black, blue, or white, at the option of the wearer, a three-cornered chapeau de bras, a black cockade and eagle, and a steel-mounted sword, with a white scabbard. It is to be understood, however, that the use of this particular dress is not prescribed by the President. It is barely suggested, by his direction as an appropriate and a convenient uniform dress for the use of our ministers, and other diplomatic agents of the United States."

Mr. Van Buren, Sec. of State, to Mr. Van Ness, Oct. 2, 1829. MSS. Inst., Ministers.

"The fashion of the coat recommended for the use of our ministers, &c., upon occasions when full dresses are required by the usages of the courts to which they are accredited, is a single-breasted one, with a standing collar, though they are left at perfect liberty, by the personal and circular instructions which are addressed to all of them by this Department, to consult and be governed by their own taste in the adoption of any other that may be more agreeable to them. The fashion recommended was supposed to be correspondent with the simplicity of our institutions, and was believed to be sufficiently distinguished for all the purposes intended, and it is for these reasons, and for the sake of uniformity, recommended, but *not prescribed*, for their adoption. We were unapprised till the receipt of your letter that our ministers at London and Paris had adopted a different fashion."

Mr. Van. Buren, Sec. of State, to Mr. Van Ness, Mar. 3, 1831. MSS. Inst., Ministers.

"I deem it proper, however distasteful the subject may be both to you and myself, to relate to you a conversation which I had on Tuesday last with Major General Sir Edward Cust, the master of ceremonies at this court, concerning my court costume. I met him at the Traveler's Club, and, after an introduction, your circular on this subject became the topic of conversation. He expressed much opposition to my appearance at court in the simple dress of an American citizen. I said that such was the wish of my own Government, and I intended to conform to it, unless the Queen herself would intimate her desire that I

should appear in costume. In that event I should feel inclined to comply with Her Majesty's wishes. He said that Her Majesty would not object to receive me at court in any dress I chose to put on, but, whilst he had no authority to speak for her, he yet did not doubt it would be disagreeable to her if I did not conform to the established usage. He said I could not, of course, expect to be invited to court balls or court dinners, where all appear in costume; that Her Majesty never invited the bishops to balls, not deeming it compatible with their character; but she invited them to concerts, and on these occasions, as a court dress was not required, I would also be invited. He grew warm by talking, and said that whilst the Queen herself would make no objections to my appearance at court in any dress I thought proper, yet the people of England would consider it *presumption*. I became somewhat indignant, in my turn, and said that, whilst I entertained the highest respect for Her Majesty, and desired to treat her with the deference which was eminently her due, yet it would not make the slightest difference to me individually whether I ever appeared at court.

"He stated that in this country an invitation from the Queen was considered a command.

"I paid no attention to this remark, but observed that the rules of etiquette at the British court were more strict even than in Russia. Senator Douglas, of the United States, had just returned from St. Petersburg. When invited to visit the Czar in costume he informed Count Nesselrode that he could not thus appear. The count asked him in what dress he appeared before the President of the United States. Mr. Douglas answered in the very dress he then wore. The count, after consulting the Emperor, said that was sufficient, and in this plain dress he visited the Emperor at the palace and on parade, and had most agreeable conversations with him on both occasions.

"Sir Edward then expressed his gratification at having thus met me accidentally; said he had just come to town for that day, and should leave the next morning, but would soon do himself the honor of calling upon me.

"Although he disclaimed speaking by the authority of the Queen, yet it appeared both to myself and Colonel Lawrence, who was present, that they must have had some conversation in the court circle on the subject. I entertain this belief the more firmly as Sir Edward has since talked to a member of this legation in the same strain.

"So then, from present appearances, it is probable I shall be placed socially in Coventry on this question of dress, because it is certain that should Her Majesty not invite the American minister to her balls and dinners, he will not be invited to the balls and dinners of her courtiers. This will be to me, personally, a matter of not the least importance, but it may deprive me of the opportunity of cultivating friendly and social relations with the ministers and other courtiers which I might render available for the purpose of obtaining important information and promoting the success of my mission.

"I am exceedingly anxious to appear 'at court in the simple dress of an American citizen,' and this not only because it accords with my own taste, but because it is certain that, if the minister to the court of St. James should appear in uniform, your circular will become a dead letter in regard to most, if not all, the other ministers and chargés of our country in Europe.

"The difficulty in the present case is greatly enhanced by the fact that the sovereign is a lady, and the devotion of her subjects towards her partakes of a mingled feeling of loyalty and gallantry. Any conduct, therefore, on my part which would look like disrespect towards her personally could not fail to give great offense to the British people. Should it prove to be impossible for me to conform to the suggestions of the circular, in regard to dress 'without detriment to the public interest,' and 'without impairing my usefulness to my country,' then I shall certainly and cheerfully be guided by its earnest recommendation and 'adopt the nearest approach to it compatible with the due performance of my public duties.' This course I pursued from choice whilst minister in Russia, and this course I should have pursued here without instructions."

Mr. Buchanan, minister at London, to Mr. Marcy, Sec. of State, Oct. 28, 1853. MSS. Dispatches, Gr. Brit. 2 Curtis' Buchanan, 107.

Mr. G. T. Curtis (2 Curtis' Buchanan, 110) states the subsequent proceeding as follows:

"As the court was not in London at the time when this letter was written, the portentous question of Mr. Buchanan's costume was not likely to be brought to an immediate solution. But early in February (1854), Parliament was to be opened by the Queen in person. Mr. Buchanan did not attend the ceremony, and thereupon there was an outcry in the London press. The following extract from a dispatch to Mr. Marcy gives a full account of the whole matter, up to the date:

"'You will perceive by the London journals, the Times, the Morning Post, the News, the Morning Herald, the Spectator, the Examiner, Lloyd's, &c., copies of which I send you, that my absence from the House of Lords, at the opening of Parliament, has produced quite a sensation. Indeed, I have found difficulty in preventing this incident from becoming a subject of inquiry and remark in the House of Commons. All this is peculiarly disagreeable to me, and has arisen entirely from an indiscreet and rather offensive remark of the London Times, in the account which that journal published of the proceedings at the opening of Parliament. But for this, the whole matter would probably have passed away quietly, as I had desired.

"'Some time after my interview with Sir Edward Cust, the master of ceremonies, in October last (whom I have never since seen), which I reported to you in my dispatch No. 13, of the 28th of October, I determined, after due reflection, neither to wear gold lace nor embroidery at court; and I did not hesitate to express this determination. The spirit of your circular, as well as my own sense of propriety, brought me to this conclusion. I did not deem it becoming in me, as the representative of a Republic, to imitate a court costume, which may be altogether proper in the representatives of royalty. A minister of the United States should, in my opinion, wear something more in character with our democratic institutions than a coat covered with embroidery and gold lace. Besides, after all, this would prove to be but a feeble attempt 'to ape foreign fashions,' because, most fortunately, he could not wear the orders and stars which ornament the coats of the diplomatists, nor could he, except in rare instances, afford the diamonds, unless hired for the occasion.

"'At the same time, entertaining a most sincere respect for the exalted character of the Queen, both as a sovereign and a lady, I expressed a desire to appear at court in such a dress as I might suppose would be

most agreeable to herself, without departing from the spirit of the circular.

"'It was then suggested to me, from a quarter which I do not feel at liberty to mention, that I might assume the civil dress worn by General Washington; but after examining Stuart's portrait, at the house of a friend, I came to the conclusion that it would not be proper for me to adopt this costume. I observed fashions had so changed since the days of Washington, that if I were to put on his dress, and appear in it before the chief magistrate of my own country, at one of his receptions, I should render myself a subject of ridicule for life. Besides, it would be considered presumption in me to affect the syle of dress of the Father of his Country.

"'It was in this unsettled state of the question, and before I had adopted any style of dress, that Parliament was opened. If, however, the case had been different, and I had anticipated a serious question, prudential reasons would have prevented me from bringing it to issue at the door of the House of Lords. A court held at the palace would, for many reasons, be a much more appropriate place for such a purpose.

"'Under these circumstances I received, on the Sunday morning before the Tuesday on which Parliament met, a printed circular from Sir Edward Cust, similar to that which I have no doubt was addressed to all the other foreign ministers, inviting me to attend the opening of the session. The following is extracted from this circular: 'No one can be admitted into the diplomatic tribune or in the body of the House but in full court dress.'

"'Now, from all the attending circumstances, I do not feel disposed to yield to the idea that any disrespect was intended by this circular either to my country or myself. Since I came to London I have received such attentions from high official personages as to render this quite improbable. What may be the final result of the question I cannot clearly foresee, but I do not anticipate any serious difficulties.'"

The dispatch above quoted is dated Feb. 7, 1854, and is contained in MSS. Dispatches, Gr. Brit., Dept. of State.

"I still anticipate difficulty about my costume, but should this occur it will probably continue throughout my mission. It is, therefore, no valid reason why you should postpone your visit. In that event you must be prepared to share my fate. So far as regards the consequences to myself I do not care a button for them, but it would mortify me very much to see you treated differently from other ladies in your situation.

"If this costume affair should not prove an impediment, I feel that I shall get along very smoothly here. The fashionable world, with the exception of the high officials, are all out of London, and will remain absent until the last of February or the first of March. I have recently been a good deal in the society of those who are now here, and they all seem disposed to treat me very kindly, especially the ladies. Their hours annoy me very much. My invitations to dinner among them are all for a quarter before eight, which means about half-past that hour. There is no such thing as social visiting here of an evening. This is all done between two and six in the afternoon, if such visits may be called social. I asked Lady Palmerston what was meant by the word 'early,' placed upon her card of invitation for an evening reception, and she informed me about ten o'clock. The habits and customs and business of the world here render these hours necessary. But how ridiculous it

is in our country, where no such necessity exists to violate the laws of nature in regard to hours, merely to follow the fashion of this country."

Mr. Buchanan, minister at London, to Miss Lane, Dec. 9, 1853. 2 Curtis' Buchanan, 109.

"I dined on Wednesday last with the Queen, at Buckingham Palace. Both she and Prince Albert were remarkably civil, and I had quite a conversation with each of them separately. But the question of costume still remains, and from this I anticipate nothing but trouble in several directions. I was invited 'in frock-dress' to the dinner, and, of course, I had no difficulty. To-morrow will be the first levée of the Queen, and my appearance there in a suit of plain clothes will, I have no doubt, produce quite a sensation, and become a subject of gossip for the whole court."

Mr. Buchanan to Miss Lane, Feb. 18, 1854. 2 Curtis' Buchanan, 113.

"In a dispatch to Mr. Marcy, written soon after his appearance at the Queen's levee, Mr. Buchanan said: 'I have purposely avoided to mention the names of those with whom I have had interviews on this subject, lest it might expose them to censorious remarks hereafter, but having mentioned that of Sir Edward Cust, the master of ceremonies, in my dispatch No. 13, of the 28th October last, it is but an act of simple justice to state that at the court on Wednesday last his attentions to me were of the kindest and most marked character, and have placed me under many obligations. In the matter of the sword, I yielded without reluctance to the earnest suggestion of a high official character, who said that a sword at all the courts of the world was considered merely as the mark of a gentleman, and although he did not mention the Queen's name, yet it was evident from the whole conversation that this was desired as a token of respect for Her Majesty. He had on a former occasion expressed the hope that I would wear something indicating my official position, and not appear at court, to employ his own language, in the dress I wore upon the street. I told him promptly that I should comply with his suggestion, and that in wearing a sword at court as an evidence of the very high regard which I felt for Her Majesty, I should do nothing inconsistent with my own character as an American citizen or that of my country. I might have added that as 'the simple dress of an American citizen' is exactly that of the upper court servants, it was my purpose from the beginning to wear something which would distinguish me from them. At the first I had thought of United States buttons, but a plain dress sword has a more manly and less gaudy appearance. I hope I am now done with this subject forever.'"

2 Curtis' Buchanan, 115.

The dispatch above quoted is in MSS. Dispatches, Gr. Brit., under date of Feb. 24, 1854.

"The dress question, after much difficulty, has been finally and satisfactorily settled. I appeared at the levee on Wednesday last, in just such a dress as I have worn at the President's one hundred times. A black coat, white waistcoat and cravat, and black pantaloons, and dress boots, with the addition of a very plain black-handled and black-hilted dress sword. This to gratify those who have yielded so much, and to distinguish me from the upper court servants. I knew that I would be received in any dress I might wear, but could not have anticipated

that I should be received in so kind and distinguished a manner. Having yielded, they did not do things by halves. As I approached the Queen, an arch but benevolent smile lit up her countenance; as much as to say, you are the first man who ever appeared before me at court in such a dress. I confess that I never felt more proud of being an American than when I stood in that brilliant circle 'in the simple dress of an American citizen.' I have no doubt the circular is popular with a majority of the people of England. Indeed, many of the most distinguished members of Parliament have never been at court, because they would not wear the prescribed costume."

Mr. Buchanan to Miss Lane, Feb. 24, 1854; 2 Curtis' Buchanan, 114.

The doffing his uniform in court receptions by Mr. Sanford, secretary of the legation at Paris, in 1853, was approved by the Secretary of State. Mr. Mason, the minister at Paris, continued to wear "a court" dress, and this was left to his discretion by the Secretary.

Mr. Marcy, Sec. of State, to Mr. Sanford, Feb. 18, 1854; to Mr. Mason, Feb. 20, 1854. MSS. Inst., France.

"The 'contretemps' experienced by me at the levee, yesterday, is inaccurately stated in the Times of to-day. * * * I will briefly tell you the facts without a comment. I took with me to the palace three American gentlemen. One of these is an eminent professor of civil and military engineering in our Military Academy at West Point, and has the assimilated rank of major in the Army. He wore his official costume, a blue dress coat, with buttons of the Engineer Corps, blue pantaloons, white vest, black stock, and the common hat. It was objected, in a manner exceedingly kind and courteous, that he wore a black cravat, had no chapeau, and no sword, and could not thus pass the Queen. I tried once, twice, or thrice, to surmount the difficulty by adverting to the *official* character of his dress, but the rule was express, and there was no discretion to relax it. Pained at the position in which my estimable countryman was placed, among strangers, and in a place to which he was entirely unaccustomed, I unhesitatingly offered to go home with him, and in this suggestion his companions joined. We retired. It was impossible to do less, and we did no more."

Mr. Dallas to M. M., London, June 26, 1856; 1 Dallas's Letters, 53.

On this scene some characteristic comments are given by Lord Malmesbury, British secretary for foreign affairs in Lord Derby's administration, in his Memoirs, under date of June 26, June 28, 1856.

2 Memoirs of an ex-Minister, 48.

Congress having by resolution taken from the Secretary of State the discretion reposed in him as to prescribing the costumes of those engaged in the service of the Department, the discretion "to select his own costume" is left to the gentlemen so employed.

Mr. Fish, Sec. of State, to Mr. Jay, July 13, 1869. MSS. Inst. Austria. See Senate Ex. Doc. 31, 36th Cong., 1st sess.

"The diplomatic officials of nearly all countries wear a uniform generally consisting of a coat more or less richly embroidered with gold, a cocked hat, and sword. By a resolution of Congress passed in 1867 the diplomatic officials of the United States are forbidden to wear 'any uni-

form or official costume not previously authorized by Congress;' and although the wording of the resolution is ambiguous, and might be held to prevent a minister's wearing any clothes at all, he appears in ordinary evening dress, unless, having been a military or naval officer, he wear the uniform prescribed for his rank. The history of this resolution is somewhat curious. At the beginning of our Government the costume worn by men in society admitted of much greater variety than at present in color, cut and ornament, and therefore there was no special distinction, except in point of richness, between dress worn at court and on ordinary occasions. When our mission went to Ghent, in 1814, for the conclusion of the treaty with Great Britain, a change had come over European usages; and it was found advisable to adopt some uniform to mark the rank of the members of the mission. They agreed to wear a blue coat, slightly embroidered with gold, with white breeches, white silk stockings, and gold knee buckles and shoe buckles, a sword, and a small cocked hat with a black cockade. For grand occasions, this uniform was made somewhat richer. In 1823, Mr. John Quincy Adams, then Secretary of State, wrote to our ministers abroad recommending the use of the uniform worn by the mission of Ghent, sending a formal description of it as well as an engraved plate. During the administration of General Jackson in 1829, this uniform was changed. It was made simpler and cheaper, consisting of a black coat with a gold star on each side of the collar, black or white knee breeches, a three-cornered chapeau bras, with a black cockade and a gold eagle, and a steel-mounted sword with a white scabbard. This dress was not prescribed by the President, but was suggested as an appropriate and convenient uniform dress for the diplomatic agents of the United States. It is said that not all ministers conformed to this recommendation, and that some of them appeared in more brilliant uniforms suited to their respective tastes. Some suggestions were made on this subject to the Department of State; and Mr. Marcy, on June 1, 1853, issued a circular withdrawing all previous instructions, and recommending the appearance at court of our ministers in the simple dress of an American citizen 'whenever it could be done without detriment to the public interest.' Mr. Marcy cited the example of Dr. Franklin, who had appeared in the French court in very simple dress;* but it is now well known that this was not owing to the love of simplicity on the part of Franklin, but merely that on a certain occasion his presence was so much desired at court, when he had no clothes in which he considered it fit to appear, that he was requested to come in whatever he happened to be wearing at the moment. In compliance with these instructions, several of our ministers attempted to go to court in plain evening dress. To Mr. Belmont, at The Hague, no objection was made, although it was evidently preferred that he should comply with the usages of the place. Mr. Mason presented his credentials to the Emperor Napoleon in civil dress, but subsequently adopted a simple uniform, which he always wore on ceremonial occasions. At Stockholm, while the King expressed his perfect willingness personally, to receive Mr. Schroeder in plain dress, he said, 'the etiquette of my house is subject to regulations which cannot be waived for one in preference to others. In audiences of business I will receive him in any dress his Government may prescribe; but in the society of my family and on occasions of court no one can be received but in court dress, in conformity with the established customs.'

* This, however was Quaker full dress, being court dress in the times of Charles II.

Mr. Vroom, at Berlin, was told that 'His Majesty would not consider an appearance before him without costume as respectful.' Mr. Buchanan was excluded from the diplomatic tribune at the opening of Parliament because he refused to wear court dress; and when subsequently he insisted on wearing civilian dress, Sir Edward Cust told him 'that he hoped he would not appear at court in the dress he wore upon the street, but would wear something indicating his official position.' He therefore appeared at court in ordinary evening dress, with a plain black sword and a cocked hat. Mr. H. S. Sanford, who had been acting as chargé d'affaires at Paris until the arrival of Mr. Mason, carried out Mr. Marcy's instructions literally, and adopted an evening dress. When Mr. Mason, as has just been mentioned, returned to the use of uniform, Mr. Sanford complained of this to the Department of State, and offered his resignation. His conduct in the matter was approved by Mr. Marcy, but his resignation was accepted. Six years afterwards in January, 1860, when Mr. Faulkner was about proceeding to Paris, Mr. Sanford wrote to General Cass referring to the previous correspondence, ridiculing Mr. Mason's course, and asking that Mr. Faulkner should be instructed to wear civilian dress. Mr. Sanford in this letter confounded two things, court dress and diplomatic uniform; for even in countries where court dress is required, there is a diplomatic uniform different from that worn by other officials; and the example of the Turkish embassador, brought up by him, was by no means to the point. Turkish diplomats always wear a diplomatic uniform, and by no means the ordinary Turkish dress, which can be worn in the presence of the Sultan. In compliance with a resolution of the Senate, the papers on this subject were printed shortly afterward. (Senate Ex. Doc. 31, 36th Cong., 1st sess., Apr. 1, 1860.) No further action was taken until March, 1867, when, by the joint efforts of Senator Sumner and General Banks, the resolution in question was forced through Congress. * * * The resolution, in point of fact, does not accomplish what was intended by it—to prevent the wearing of court dress in London, almost the only place where it is worn, for court dress is neither a uniform nor an official costume."

Schuyler's Am. Diplom., 139 *ff.*

"Officers of the several grades in the diplomatic service of the United States are hereby instructed to conform to the requirements of law prohibiting them from wearing any uniform or official costume not previously authorized by Congress.

"The statute authorizes all officers who have served during the rebellion as volunteers in the armies of the United States, and who have been, or may hereafter be, honorably mustered out of the volunteer service, to bear the official title, and, upon occasions of ceremony, to wear the uniform of the highest grade they have held by brevet or other commissions in the volunteer service."

Printed Pers. Inst., Dip. Agents, 1885.

"I observe that, in your dispatch, you refer to the exceptional position of the minister and secretary of legation of the United States, whose plain evening costume, amidst a brilliant display of uniforms of every class, 'succeeded,' as you say, 'in securing the embarrassment of *digito monstrari* conspicuousness.' * * *

"The absence of civil distinctions at home forbids their adoption abroad; and even were the diplomatic organization a distinct branch of service, with appointment for life or good behavior and promotion by seniority, the fitness of adopting for its members a distinctive uniform is questionable. The analogy of the military and naval services is not wholly in point, for with them uniform is necessary to a proper disciplinary organization, and visible distinctions of official rank are essential.

"Uniforms are of two classes—those denoting relative rank and authority in an organized disciplined service, and those which, like the robes of knightly orders and the like, mark class or titular privilege. Neither of these is applicable, in theory, to those citizens who may be chosen to represent abroad the sovereignty of the Republic. * * * The dignity of the representative office should be deemed *per se* above all distinctions in the way of personal apparel.

"I have been told of a pertinent illustration of this in Spain, some years ago, on the occasion of the first official reception of the late King. All the dignitaries and officers of the realm, to the number of some three thousand, were in attendance, and foreign representatives likewise assisted. Uniform being *de rigueur*, every one wore that of the highest official or titular rank to which he was entitled. In the whole assemblage four men appeared in evening dress—the president of the Senate, the president of the Chamber of Deputies, and the minister and secretary of legation of the United States. They were indeed conspicuous, but necessarily so. The Spanish legislative body wears as such no uniform. Either of the presiding officers might have worn, as a private individual, any one of the uniforms belonging to the rank held in other official stations, as ambassador, privy councillor, or grand cross; but such uniform would have been beneath the dignity of the representative function with which they stood invested.

"Upon reflection, and in the light of this example, it may be questioned whether the representative quality of an envoy, the highest known in the coequal intercourse of nations, is not rather diminished than enhanced by wearing, as is done in some cases under statutory authority, the uniform of past or present military rank."

Mr. Bayard, Sec. of State, to Mr. Curry, Jan. 15, 1886. MSS. Inst., Spain.

(4) EXPENSES.

§ 107c.

"Congress has mortified me a little by cutting off one-fifth of my salary, at a time when the increase of my family rather required an increase of it. The consequence of it must be that I must entertain less company, whereas the interest of the United States requires that I should entertain more. There is not a man in the world less inclined to pomp or to entertainments than myself, and to me personally it is a

relief to be excused from both. But if I know anything in the world, I know that this measure is not for the public good, nor a measure of economy. If there is anybody in America who understands economy better than the Dutch nation, I know nothing of either, and their policy is always, upon occasions of consequence, to appoint ambassadors, and even ambassadors extraordinary, as they did at the late peace, my friend Brantzen, with seventy-five thousand guilders to furnish his house, and his table, and seventy-five thousand guilders a year to spend in it. In short, that nation which places its own ambassadors at the tail of the whole creation, cannot itself expect to be soon at the head. If this policy does not expose our country to a million insults, and at last compel her by war and bloodshed to consult better her own honor, I am much mistaken. How are we to do? We are to negotiate with all the ambassadors here, that is, we are to be invited to dine to-morrow at a table with three thousand pounds sterling upon it, and next day we are to return this civility by inviting the same company to dine with us upon earthenware! I am well aware of the motives to this conduct, which are virtuous and laudable, but we shall find that we cannot keep up our reputation in Europe by such means, where there is no idea of the motives and principles of it, and where extreme parsimony is not economy. We have never been allowed anything to furnish our houses or tables, and my double capacities have obliged me to furnish myself, both in Holland and France, which, besides exposing me to be unmercifully robbed and plundered in my absence, has pinched and straitened me confoundedly. However, I am the best man in the world to bear it, and so be it."

Mr. J. Adams to Mr. Warren, Aug. 27, 1784. See 3 John Adams' Works, 139, 161; 9 John Adams' Works, 525, 527.

The report of Mr. Jefferson, as Sec. of State, on Nov. 3, 1792, in respect to expenses of foreign intercourse, is given in 1 Am. State Pap., (For. Rel.,) 137.

As to the inadequacy of the salary allowed ministers in Paris for their support, see Mr. Gallatin to Mr. Madison, Nov. 23, 1815; 1 Gallatin's Writings, 659.

"Is it necessary that the United States should be represented with foreign powers? This has long ceased to be a question. Shall they maintain a proper station there—not assuming, but dignified, such as the general expectation and common opinion of mankind have given them? That has never been a question. The character of the country, if not its rank, is in some degree affected by that which is maintained by its ministers abroad. Their utility in all the great objects of their mission is essentially dependent on it. A minister can be useful only by filling his place with credit in the diplomatic corps, and in the corresponding circle of society in the country in which he resides, which is the best in every country. By taking the proper ground, if he possesses the necessary qualifications and is furnished with adequate means, he will become acquainted with all that passes, and from the highest and most authentic sources. Inspiring confidence by reposing it in those who deserve it, and by an honorable deportment in other respects, he will have much influence, especially in what relates to his own country. Deprive him of the necessary means to sustain this ground, separate him from the circle to which he belongs, and he is

reduced to a cipher. He may collect intelligence from adventurers and spies, but it will be of comparatively little value, and in other respects he had as well not be there."

Mr. Monroe, Sec. of State, to Mr. Lowndes, chairman of Committee on Ways and Means, Apr. 5, 1816. Quoted in Schuyler's American Diplomacy, 151.

"The late royal marriages, and the other that is in prospect, make distressing drafts upon the pockets of all who are obliged to go through the ceremonies to which they give rise. To-morrow the Queen holds a drawing room, and we have a summons from the chamberlain to attend a party at Carleton House on Monday. I would as soon have been served with a summons in debt for fifty pounds sterling. Ladies who have been at court and know what must be the expense of a wardrobe will be the persons to understand this remark."

Mr. Rush, minister at London, to Mr. Monroe, President, unofficial, Apr. 22, 1818. Monroe Papers, Dept. of State.

The opinion of Mr. Wirt, Attorney-General, Oct. 1, 1821, as to allowance of salaries and outfits to ministers, is given in Senate Doc. 411, special sess., 1821. 5 Am. St. Pap. (For. Rel.), 755. (This opinion is not given in the series of opinions of Attorneys-General.)

Mr. Monroe, when succeeding Mr. Morris as minister at Paris, was, in consequence of the hospitality required of him, "encouraged not only to spend all his salary in his office, but much more, and had he been in a condition to enlarge his expenditures still beyond, his country would have profited by the sacrifice."

Mr. Vaughan, Memorandum of 1826 in Monroe MSS.

As a preliminary principle, it seems clear that the representatives of a great nation like the American ought to appear in some measure as the representatives of other great nations appear; otherwise the loss of influence produced by refusing to submit to small expenses may have to be made by other expenses. * * * Whoever is fit to represent a nation at a great court must be trusted to act on these extraordinary occasions at his own discretion, subject to the approbation of his superiors at home.

Ibid.

"The general superintendence of our foreign relations, which, under your direction, is vested in the head of the State Department, would seem to require that he should, at proper periods, bring to your view the state of our diplomatic intercourse with other nations, and suggest the measures which occur to him for making its agency more effectual.

"That agency employed (necessarily, perhaps) by European powers in forming or defeating political combinations, and in a vigilant observation of each other's plans and operations, with us has different objects. Remote from these scenes of political jealousy and strife, strong in our own resources, and giving no umbrage by intermeddling in the affairs of other nations, we want no alliances for our defense, nor do we fear that any will be formed which it is our interest to defeat, and thus have no motive for entering the vortex of European diplomacy. Ours has a

distinct character. Its only objects are the preservation of peace, the extension to other powers of a mutually beneficial commerce, the promotion of a friendly interchange of good offices, and the establishment, by treaty, of principles which may render wars less frequent and disarm them when they must occur of many unnecessary horrors, inconsistent with the manners and feelings of the age in which we live.

"Confined, however, to these objects, this branch of the Executive functions of our Government would seem to be sufficiently important; but all who have observed its operations must be convinced that its utility is not sufficiently appreciated and that it is even regarded with unreasonable jealousy. Ministers are considered as favorites, selected to enjoy the pleasures of foreign travel at the expense of the people, their places as sinecures, and their residence abroad as a continued scene of luxurious enjoyment.

"Their exertions, their embarrassments, their laborious intercourse with the Governments to which they are sent, their anxious care to avoid anything that might, on the one hand, give just cause of offense, or to neglect or abandon the rights of their country or its citizens, on the other, are all unknown at home. Even the merit of their correspondence, from which, at least, the reward of honor might be derived, is hid in the archives of the Department and rarely sees the light, and except in the instances of a successful negotiation for claims, a minister returns to his country, after years of the most laborious exertion of the highest talent, with an injured, if not a broken, fortune, his countrymen ignorant of his exertions, and undervaluing them perhaps if known. On the whole, there is scarcely an office of which the duties, properly performed, are more arduous, more responsible, and less fairly appreciated than that of a minister to a country with which we have important commercial relations. Yet there is some reason to believe that appointments to them are eagerly sought from the same false ideas of the nature of the employment. To these mistaken ideas, more or less prevalent, may be traced many of the evils which have operated, and still operate, injuriously upon the interests and reputation of the country. * * *

"A minister to a foreign power, whatever may be his grade, is the accredited agent of his country. If he is forced, from the inadequate compensation that is allowed him, to live in a manner that will not allow him to associate on an equal footing with others of the same grade, he is deprived of many of the advantages which social intercourse affords to perform essential duties, and to gain important information which can only be obtained by mixing in the first circles. It is not expected, nor should I recommend, that his allowance should be such as to enable him to vie in expense of living with the ministers of monarchs who allow extravagant salaries, and who themselves have large fortunes which they expend in addition to their official allowance, but he ought to have the means of returning civilities which he receives—of

giving to his countrymen a plain hospitable reception when they visit the place of his residence—and, above all, he ought to have an allowance that will enable him to meet the expenses absolutely necessary for the due performance of his official duties without trenching on his salary so much as to render it entirely incompetent to his necessary and decent support. * * *

"The usual answer to these representations is that, notwithstanding all these inconveniences, candidates are always found eagerly seeking these appointments. But it must be remarked that these candidates are of two kinds: First, men of wealth who are willing to purchase the honor of the station at the expense of their private fortunes. But although these are not always the fittest in other respects for the place, they are sometimes selected, and their appointment is popular, because there seems to be no objection to a minister's keeping up a decent appearance, provided he does it at his own expense. Secondly, there are others who seek these appointments, because they make false calculations on the consequences. They resolve to be very economical, to live within their income, and to be drawn into no extravagance, but on arriving at their place of destination they find that expenses which might with prudence have been avoided here are inevitable abroad. Civilities are received which must be returned; strangers are introduced who must be entertained; their countrymen call on them and must be treated hospitably; in short, they find themselves obliged to live as others do, or to forego all the advantages which social intercourse would give them in the business of their mission. The consequence is that all our ministers return with impaired fortunes, however firm their resolutions have been to avoid unnecessary expense. It is possible there may be exceptions, but they are certainly very rare. If, then, none of the ministers we have sent abroad, however prudent, have been able to live on the salaries that are allowed them, the conclusion is inevitable that the salaries ought to be increased or the ministers should be recalled. If the mission is useful it ought to be supported at the public, not at private, expense, and the representatives of a great nation ought not to be obliged to employ, in devising parsimonious expedients for their support, that time and those talents which ought to be occupied in the service of their country."

Report of Mr. Livingston, Sec. of State, to President Jackson, Jan. 31, 1833. H. R. Ex. Doc. 94, 22d Cong., 2d sess.

"I have, since my arrival, been living inconveniently in an hotel, taking time to get my establishment on a footing of economy united with the necessary respectability of my station; and I find that the four articles of house-rent, coach-hire, servants, and fuel will take about seven thousand dollars, leaving for all my other expenses, in this expensive capital, two thousand dollars. I make this statement, not because I have any interest in it, for I am not rich enough to remain here until some remedy be applied to the evil, but for the honor of the

country, *and to enable it to avail itself of the services of other than men of large fortunes.*"

Mr. Livingston, minister at Paris, to the Sec. of State, ——, 1834. Hunt's Life of Livingston, 414. (This does not appear in the Department records.)

"As to the expense incurred for court mourning, a review of the course pursued by the Department of State in regard to contingent allowances shows that none was ever made by it, under that head, with the single exception of the case of Mr. McLane, to which you refer, and which you are already informed is regarded by the President as having been made without sufficient consideration. The President, before whom your dispatch has been laid, desires me to state to you that he sees no cause for changing the decision which he had, with deliberation, adopted on the subject."

Mr. Forsyth, Sec. of State, to Mr. Stevenson, Apr. 1, 1840. MSS. Inst., Gr. Brit.
Mr. Webster's report of July 2, 1852, as to the expediency of adopting a graduated scale of diplomatic salaries, is given in Senate Ex. Doc. No. 93, 32d Cong., 1st sess.

"Now, in order to preserve good relations with a country, it is not sufficient simply to have a person living in town as cheaply as he can afford to exist, because the social position of your representative is a very important element in his power to be useful. In regard to his intercourse with the ministers of the country, great facilities and great means of good understanding are afforded by easy social intercourse, which can only possibly be obtained by his being able to receive them, as well as also being received by them. Again, it is of great importance that your embassador should be in habits of social intercourse with public men not in office; that he should have the means of receiving them, becoming acquainted with their views, and explaining to them the views and policy of his own country. Therefore, I think it is of great importance to this country that your representative should be in such an easy position with regard to money affairs as may enable him to receive hospitably persons of all kinds, and I may say also of different nations."

Lord Palmerston, testimony before committee of House of Commons, quoted Senate Ex. Doc. No. 93, 32d Cong., 1st sess. Schuyler's Am. Diplom., 150.

XXXII. *CONTINGENT FUND AND SECRET SERVICE.*

§ 108.

"The allowance to a minister resident of the United States is 4,500 dollars a year *for all his personal services and other expenses*, a year's salary for his outfit, and a quarter's salary for his return. It is understood that *the personal services and other expenses* here meant do not extend to the cost of gazettes and pamphlets transmitted to the Secretary of State's office, to translating or printing necessary papers, postage, couriers, and necessary aids to poor American sailors. These additional charges, therefore, may be inserted in your accounts; but no other of

any description, unless where they are expressly directed to be incurred. The salary of your new grade being the same as of your former one, and your services continued, though the scene of them is changed, there will be no intermission of salary, the new one beginning where the former ends, and ending when you shall receive notice of your permission to return. For the same reason there can be but one allowance of outfit and return, the former to take place now, the latter only on your final return."

Mr. Jefferson, Sec. of State, to Mr. Short, Jan. 23, 1792. MSS. Inst. Ministers.

The fund for foreign intercourse is an annual fund placed at the disposal of the President to defray expenses; and he is limited in respect to an outfit only by the provision that it shall not exceed a year's salary. When the outfit has been paid, it is beyond the recall of the President or Congress.

1 Op., 545, Wirt, 1822.

The President, having the foreign-intercourse fund under his direction, may advance to a minister going from the United States to Chili such part of his salary as he shall deem necessary to the proper fulfillment of public engagements.

1 Op., 620, Wirt, 1823.

The President, being intrusted with the subject of the diplomatic intercourse of the United States with foreign nations, may, in his discretion, advance money to a minister going abroad. (Act 1823, 3 Stat., 723; Rev. Stat., §§ 3648, 1740, 1743.)

2 Op., 204, Berrien, 1829.

The expense of recasting cannon, &c., to be presented to the Imaum of Muscat, in return for presents received, may be defrayed from the appropriation for the contingent expenses of foreign intercourse.

4 Op., 358, Mason, 1845.

This appropriation is placed at the disposal of the Executive, who is charged with the care and management of all our foreign relations. And, as it has been the practice of our Government, from its earliest history, to interchange presents with the semi-barbarous nations of Asia and Africa, and as the Executive is vested with a discretion respecting the manner in which friendly relations with them can be best maintained, it follows that, if he shall be of opinion that the public interests will be promoted by tendering a present in return for one received, he may legally do so, and cause the expense thereof to be defrayed from the funds thus placed at his disposal.

4 Op., 358, Mason, 1845.

A public minister who was at home at the time of his recall, and who was paid his salary down to the date of his recall, is not entitled, in

addition, to compensation for such further time as would be necessarily spent in coming home from the seat of his mission.

9 Op., 261, Black, 1858.

"The usual annual appropriation 'for the contingent expenses of intercourse between the United States and foreign nations' has been disbursed since the date of the act of May 1, 1810, in pursuance of its provisions. By the third section of that act it is provided: 'That when any sum or sums of money shall be drawn from the Treasury, under any law making appropriation for the contingent expenses of intercourse between the United States and foreign nations, the President shall be, and he is hereby, authorized to cause the same to be duly settled, annually, with the accounting officers of the Treasury, in the manner following, that is to say: By causing the same to be accounted for, specially, in all instances wherein the expenditure thereof may, in his judgment, be made public, and by making a certificate of the amount of such expenditures as he may think it advisable not to specify; and every such certificate shall be deemed a sufficient voucher for the sum or sums therein expressed to have been expended.'

"Two distinct classes of expenditure are authorized by this law; the one of a public, and the other of a private and confidential character. The President in office at the time of the expenditure is made by the law the sole judge whether it shall be public or private. Such sums are to be 'accounted for specially in all instances wherein the expenditure thereof may, in his judgment, be made public.' All expenditures 'accounted for specially' are settled at the Treasury, upon vouchers, and not on 'President's certificates,' and, like all other public accounts, are subject to be called for by Congress, and are open to public examination. Had information as respects this class of expenditures been called for by the resolution of the House, it would have been promptly communicated.

"Congress, foreseeing that it might become necessary and proper to apply portions of this fund for objects, the original accounts and vouchers for which could not be 'made public' without injury to the public interests, authorized the President, instead of such accounts and vouchers, to make a certificate of the amount 'of such expenditures as he may think it advisable not to specify,' and have provided that 'every such certificate shall be deemed a sufficient voucher for the sum or sums therein expressed to have been expended.'

"The law making these provisions is in full force. It is binding upon all the Departments of the Government, and especially upon the Executive, whose duty it is 'to take care that the laws be faithfully executed.' In the exercise of the discretion lodged by it in the Executive several of my predecessors have made 'certificates' of the amount 'of such expenditures as they have thought it advisable not to specify,' and upon

these certificates, as the only vouchers, settlements have been made at the Treasury."

President Polk's Special Message, Apr. 10, 1846.

"Actuated undoubtedly by considerations of this kind, Congress provided such a fund, coeval with the organization of the Government; and subsequently enacted the law of 1810 as the permanent law of the land. While this law exists in full force, I feel bound by a high sense of public policy and duty to observe its provisions, and the uniform practice of my predecessors under it.

Ibid.

XXXIII. *SELF-CONSTITUTED MISSIONS ILLEGAL.*

§ 109.

"A self-constituted mission to the French Republic, in 1798, on the part of Dr. Logan, of Philadelphia, led to the passage of the act of Congress of the 30th of January, 1799, subjecting to fine and imprisonment any citizen of the United States holding correspondence with a foreign Government or its agents, with intent to influence the measures of such Government in relation to disputes or controversies with the United States. Statutes at Large, vol. i, p. 613; Hildreth's History of the United States, 2d series, vol. ii, 280."

Lawrence's Wheaton, ed. 1863, p. 1003. That this statute is still in force, see Rev. Stat., § 5,335; and see 3 Randall's Life of Jeff., 467; 1 Whart. Crim. Law, § 274. As to Dr. Logan personally, see Whart. St. Trials, 20, 21.

"The object of Logan in his unauthorized embassy seems to have been to do or obtain something which might give opportunity for the 'true American character to blaze forth in the approaching elections.' Is this constitutional for a party of opposition to send embassies to foreign nations to obtain their interference in elections?"

President Adams to Mr. Pickering, Sec. of State, Nov. 2, 1798. 8 John Adams' Works, 615.

"Mr. Logan, of Philadelphia, a gentleman of fortune and education, and certainly not destitute of abilities, who had for several years been a member of the legislature of Pennsylvania, and has since been a Senator of the United States, though I knew he had been one of the old constitutional party in that State, and a zealous disciple of that democratical school which has propagated many errors in America, and, perhaps, many tragical catastrophes in Europe, went to France either with the pretext or real design of improving his knowledge in agriculture, and seeing the practice of it in that country. I had no reason to believe him a corrupt character or deficient in memory or veracity. After his return he called upon me, and in a polite and respectful manner informed me that he had been honored with conversations with Talleyrand, who had been well acquainted with me, and repeatedly entertained at my house, and now visited me at his request to express to me the desire of the directory, as well as his own, to accommodate all disputes with America, and to forget all that was past; to request me to send a minister from America, or to give credentials to one already in

Europe to treat, and to assure me that my minister should be received and all disputes accommodated, in a manner that would be satisfactory to me and my country. I knew the magical words, *Democrat* and *Jacobin*, were enough to destroy the credibility of any witness with some people. But not so with me. I saw marks of candor and sincerity in this relation that convinced me of its truth."

Mr. J. Adams, ex-President, 9 John Adams' Works, 244. Patriot Letters, No. 2. As to Dr. Logan, see further 8 John Adams' Works, 615; 9 *Ibid*, 243, 244, 265, 293, 307.

In a letter of Talleyrand of August 28, 1798, to Mr. Pichon, transmitted by Mr. Vans Murray to the Department, it is stated that Dr. Logan, when in Paris, was not received as a secret agent by the French Government, and that he had no political relations with that Government.

2 Am. St. Pap. (For. Rel.), 242.

The "Logan" statute, as it was called, remains, with some slight modifications, still in force. As it now appears in the Revised Statutes, it is as follows:

"SEC. 5335. Every citizen of the United States, whether actually resident or abiding within the same, or in any foreign country, who, without the permission or authority of the Government, directly or indirectly, commences or carries on any verbal or written correspondence or intercourse with any foreign Government, or any officer or agent thereof, with an intent to influence the measures or conduct of any foreign Government, or of any officer or agent thereof, in relation to any disputes or controversies with the United States, or to defeat the measures of the Government of the United States; and every person, being a citizen of, or resident within, the United States, and not duly authorized, who counsels, advises, or assists in any such correspondence, with such intent, shall be punished by a fine of not more than five thousand dollars, and by imprisonment during a term not less than six months, nor more than three years; but nothing in this section shall be construed to abridge the right of a citizen to apply, himself or his agent, to any foreign Government or the agents thereof for redress of any injury which he may have sustained from such Government, or any of its agents or subjects."

The last clause of this statute was appealed to by Mr. Seward in 1861, to stop certain action of Mr. Bunch, British consul in Charleston, South Carolina, in urging on the British Government the recognition of Confederate independence.

Mr. Adams to Earl Russell, Nov. 21, 1861. See Bernard's British Neutrality, 185. As to Mr. Bunch, see *infra*, §§ 116, 119.

"It was probably unknown to the Spanish Government that the lawyers, in giving the opinion to which it attaches so much value, (advising action adverse to the United States,) violated a positive statute of their own country forbidding communications of any sort with foreign Governments or agents on subjects to which their own Government is a party."

Mr. Madison, Sec. of State, to Mr. C. Pinckney, Feb 6, 1804. MSS. Inst., Ministers.

XXXIV. *PRESENTS NOT ALLOWABLE.*

§ 110.

In the session of 1798 a resolution passed the Senate authorizing Mr. Thomas Pinckney to receive certain presents tendered him by the courts of Madrid and London, respectively, on the termination of his missions to those places. The resolution was rejected in the House, though a resolution was subsequently unanimously adopted stating that ground of this rejection was public policy, and disclaiming any personal reference to Mr. Pinckney. (See 5 Hildreth, U. S. 237.)

"A custom prevails among the European sovereigns, upon the conclusion of treaties, of bestowing presents of jewelry or other articles of pecuniary value upon the minister of the power with which they were negotiated. The same usage is repeated upon the minister's taking leave at the termination of his mission. In Great Britain it is usual to offer the minister, at his option, a sum of money, graduated according to his rank, or a gold box or other trinket of equal value. The acceptance of such presents by ministers of the United States is expressly forbidden by the Constitution, and even if it were not, while the United States has not adopted the custom of *making* such presents to the diplomatic agents of foreign powers, it can scarcely be consistent with the delicacy and reciprocity of intercourse between them for the ministers of the United States to receive such favors from foreign princes as the ministers of those powers never can receive from this Government in return. The usage, exceptionable in itself, can be tolerated only by its reciprocity. It is expected by the President that every offer of such present which may in future be made to any public minister or other officer of this Government abroad, will be respectfully but decisively declined."

Mr. J. Q. Adams, Sec. of State, to Mr. Rush, minister at London, Nov. 6, 1817 MSS. Inst. Gr. Brit.; House Doc. No. 302, 23d Cong., 1st sess.

"I am directed by the President to instruct the ministers, consuls, and other diplomatic and commercial agents of the United States that it is required of them that in future they will not, unless the consent of Congress shall have been previously obtained, accept, under any circumstances, presents of any kind whatever from any king, prince, or foreign state."

Mr. McLane, Sec. of State, circular, Jan. 6, 1834. House Doc. No. 302, 23d Cong., 1st sess.

This document contains a report (March 4, 1834) from Mr. Archer, from the Committee on Foreign Affairs, in which it is stated that "the Government of the United States is the only one known to lay its agents employed in foreign intercourse under strict interdiction as regards the acceptance of presents in any form. This interdiction being in the Constitution, could derive no increase of notoriety more than authority from instructions to our agents abroad."

The report goes on to say that the acceptance of presents has, notwithstanding, taken place in cases when, in oriental countries, such acceptance is a matter of invariable usage, and when "refusal of acceptance would furnish occasion for resentment, compromising oftentimes the efficacy of the agency, or it might be even the official immunities or personal security of the agent." The presents in such cases, when not perishable, have been deposited in the State Department, or, when not susceptible of such deposit (as with horses), sold, and the proceeds sent to the Treasury.

On the subject of accepting office or honors from a foreign country, we have the following:

"While recognizing to the fullest extent the eminent service of Captain Martinez, of the Chilian ship-of-war Meteor, in rescuing the survivors of the crew of the United States merchant ship Manchester, under circumstances of extreme distress, the uniform practice of this Government forbids the presentation to that officer, in its own name, of any tangible token of this recognition. As all officers of the United State are forbidden to receive such rewards from foreign Governments for actions or services of striking merit, it is deemed delicate not to confer obligations in this respect upon foreign officers, which their Governments could not, under similar circumstances, be permitted to reciprocate.

"In the mercantile marine no such difficulty exists, and Congress, as you are aware, has placed a liberal fund at the disposal of the President for the purpose of enabling him to offer suitable testimonials to those brave men who so often imperil their own lives in behalf of others."

Mr. Marcy, Sec. of State, to Mr. Starkweather, Sept. 1, 1855. MSS. Inst., Chili.

"The Constitution of the United States provides that no person holding any office of profit or trust under the United States shall without the consent of Congress accept of any office or title of any kind whatever from any king, prince, or foreign state. The terms of this provision of the Constitution of the United States neither prevent nor authorize persons who may hold office under any one of the States from accepting an appointment under a foreign Government."

Mr. Hale, Asst. Sec. of State, to Mr. Rosenberg, May 22, 1872. MSS., Dom. Let.

"Diplomatic officers are forbidden from asking or accepting, for themselves or other persons, any presents, emolument, pecuniary favor, office, or title of any kind from any foreign Government. It not unfrequently happens that diplomatic officers are tendered presents, orders, or other testimonials in acknowledgment of services rendered to foreign states or their subjects. These cannot be accepted without previous authority of Congress.

"It is thought more consonant with the character of the diplomatic representation of the United States abroad that every offer of such presents should be respectfully, but decisively, declined. This having

been for several years a standing instruction to all our agents abroad, the rule is, probably, so well known as to prevent the offer of such presents in future; but it is deemed proper to call the attention of officers to the subject, and to observe that, should there be reason to anticipate such an offer, informal notice, given in the proper quarter, of the prohibition against accepting a direct tender thereof would avoid the apparent ungraciousness of declining a courtesy."

Printed Pers. Inst., Dip. Agents, 1885.

As to accepting and giving presents, see Mr. Webster, Sec. of State, to Mr. Cushing, May 8, 1843, quoted *supra*, § 67.

See as to presents to the President of the United States, Senate Rep., Ex. Doc. No. 23, 37th Cong., 2d sess.

As to presents offered to George P. Marsh, arbitrator between Italy and Switzerland on a question of boundary, by those Governments, see Senate Mis. Doc. 16, 44th Cong., 1st sess.

As to report in favor of Mr. J. R. Hawley's acceptance of decorations from the Governments of the Netherlands and of Japan, July 15, 1882, see House Rep., 1652, 47th Cong., 1st sess.

CHAPTER V.

CONSULS.

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I. *ELIGIBILITY OF.*

§ 113.

"If Congress should think proper to appoint consuls we are humbly of opinion that the choice will fall most justly, as well as naturally, on Americans, who are, in our opinion, better qualified for this business than any others, and the reputation of such an office, together with a moderate commission on the business they may transact, and the advantages to be derived from trade, will be a sufficient inducement to undertake it, and a sufficient reward for discharging the duties of it."

Messrs. Franklin, Lee, and Adams, to the President of Congress, July 20, 1778. 7 John Adams' Works, 20. See also, *ibid.* 209.

"From the nature, variety, and importance of consular duties, and their bearing on the commercial interests of nations, consuls ought always to be citizens of the country which they represent. Accordingly Vattel (Book 2, cap. 2, sec. 34) declares that 'the functions of a consul require, in the first place, that he should be not a subject of the state where he resides, as, in this case, he would be obliged in all things to conform to its orders, and thus not be at liberty to acquit himself of the duties of his office.' Chitty, in his Commercial Law (vol. 1, page 48), adopts the same principle. It is true he proceeds to say: "But, contrary to this principle, it is not unusual to appoint a native of the foreign state to be consul there, as in Portugal, Spain, and Italy, where there is a scarcity of British subjects, and in which it has been customary for the consul-general to appoint natives of such countries to act as

their deputies at inferior ports.' He adds, however, 'but this, it has been observed, is an unwarrantable and impolitic practice.'

"The President, at an early period of his administration, had this subject under consideration, and determined to appoint no consuls who were not American citizens, and, indeed, several consuls have been removed because they did not possess this qualification."

Mr. Buchanan, Sec. of State, to Mr. Donelson, Dec. 16, 1846. MSS. Inst., Prussia.

"As a general rule it is preferable that United States citizens only should be appointed to all consular offices. When, however, none can be found to serve at a particular place, aliens may be selected, giving the preference to citizens or subjects of other nationalities than that of the country where the officer is to serve.

"When, however, no such person can be found a subject of the country may be appointed if not contrary to law or treaty. If any other country has a consular officer in Tripoli who is a Turkish subject the United States may claim the same privilege under their treaty. In the case of a consular agent, however, it would be advisable previously to name to the local authorities the person proposed to be appointed, if they should not object."

Mr. Hunter, 2d Asst. Sec. of State, to Mr. Vidal, Aug. 11, 1873. MSS. Inst., Barb. Powers.

"The experience of the Government has demonstrated the inconvenience and often serious embarrassment resulting from the appointment of naturalized citizens to consulates within the country of their nativity, while with regard to appointments in other countries they stand on the same footing as all other citizens."

Mr. Fish, Sec. of State, to Mr. Glover, Apr. 7, 1876. MSS. Dom. Let.

As to the impolicy of appointing naturalized citizens as consuls to the country of their origin, see Schuyler's Am. Diplom., 79.

By section 1744, Revised Statutes, "No compensation provided for any officer mentioned in section sixteen hundred and seventy five, or for any assistant secretary of legation, or any appropriation therefor, shall be applicable to the payment of the compensation of any person appointed to or holding any such office who shall not be a citizen of the United States; nor shall any other compensation be allowed in any such case."

Section 1675 is as follows:

"Embassadors, envoys extraordinary, and ministers plenipotentiary, ministers resident, agents, and secretaries, and second secretaries of legation, shall be entitled to salaries as hereinafter provided.

"Envoys extraordinary and ministers plenipotentiary to France, Germany, Great Britain, and Russia, seventeen thousand five hundred dollars each; to Austria, Brazil, China, Italy, Japan, Mexico, and Spain, twelve thousand dollars each; to Chili and Peru, ten thousand dollars each.

"Minister resident accredited to Guatemala, Costa Rica, Honduras, Salvador, and Nicaragua, ten thousand dollars.

"Minister resident at Uruguay, ten thousand dollars.

"Ministers resident at Portugal, Switzerland, Greece, Belgium, Netherlands, Denmark, Sweden and Norway, Turkey, Ecuador, Colombia, Bolivia, Venezuela, Hawaiian Islands, and the Argentine Republic, seven thousand five hundred dollars each.

"Minister resident and consul-general at Hayti, seven thousand five hundred dollars.

"Minister resident and consul-general at Liberia, four thousand dollars.

"Agent and consul-general at Alexandria, three thousand five hundred dollars.

"Secretaries of legation to London, Paris, Berlin, and St. Petersburg, two thousand six hundred and twenty-five dollars each.

"Secretary of legation to Japan, two thousand five hundred dollars.

"Secretaries of legation to Austria, Brazil, Italy, Mexico, and Spain, one thousand eight hundred dollars each.

"The second secretaries of the legations to France, Great Britain, and Germany, two thousand dollars each."

"Ambassadors and envoys extraordinary and ministers plenipotentiary shall be entitled to compensation at the rates following, per annum, namely:

"Those to France, Germany, Great Britain, and Russia, each, seventeen thousand five hundred dollars.

"Those to Austria, Brazil, China, Italy, Japan, Mexico, and Spain, twelve thousand dollars.

"Those to all other countries, unless where a different compensation is prescribed by law, each, ten thousand dollars.

"And, unless when otherwise provided by law, ministers resident and commissioners shall be entitled to compensation at the rate of seventy-five per centum, chargés d'affaires at rate of fifty per centum, and secretaries of legation at the rate of fifteen per centum, of the amounts allowed to embassadors, envoys extraordinary, and ministers plenipotentiary to the said countries respectively; except that the secretary of legation to Japan shall be entitled to compensation at the rate of twenty-five hundred dollars per annum.

"The second secretaries of the legations to France, Germany, and Great Britain shall be entitled to compensation at the rate of two thousand dollars each per annum.

In the consular and diplomatic appropriation bill, approved February 25, 1885, there is the following clause:

"*For consular officers not citizens of the United States, six thousand dollars.*"

This item is also found in the consular and diplomatic act approved July 1, 1886. It is intended to cover salaries of vice-consuls who are not United States citizens. In August, 1886, it is said that there is not a single alien appointed to a salaried consulate, though we have several cases of such appointments at small feed consulates and commercial agencies.

The objections to the appointment of merchants as consuls are noticed in 6 Hunt's Merch. Mag., 301; 10 *ibid.*, 447; 12 *ibid.*, 211; 16 De Bow's Rev., 12.

The objections to the appointment of aliens as consuls are stated with much force in 12 Hunt's Mag., 211 *ff.*

II. *APPOINTMENT AND QUALIFYING OF.*

§ 114.

The consular convention between France and the United States did not require the reception of consuls without respect to qualifications, nor "supersede reasonable objections to a particular person who might at the moment be obnoxious to the nation to which he was sent, or whose conduct might render him so at any time hereafter."

Mr. Jefferson, Sec. of State, to the minister of France, Dec. 9, 1793. 4 Jeff. Works, 90. MSS. Notes, For. Leg.

Mr. Livingston's report of Mar. 2, 1833, on the consular system, will be found in Senate Doc. No. 83, 22d Cong., 2d sess.

Attestation is not essential to the validity of a consular bond.

1 Op., 378, Wirt, 1820.

A consul's bond takes effect from the time of its approval by the Secretary of State. (R. S., § 1697.) And where an appointee was commissioned consul on the 18th January, and his bond, dated 13th of the same month, was not approved until the 27th, this was held valid.

14 Op., 7, Williams, 1872.

"The provision of the act of Congress of May 1, 1810, fixing a salary to the consul at Algiers, and assigning to him certain duties, treating that place as belonging to a Mohammedan power, ceased to be operative when the country, of which it was the principal city, became a province of France. (See acts of March 1, 1855, and August 18, 1856.)

Mahoney *v.* U. S., 10 Wall., 62.

III. *EXEQUATURS.*

§ 115.

President Washington's order revoking the exequaturs of Duplaine, French vice-consul at Boston, with the subsequent correspondence, is given in 1 Am. St. Pap. (For. Rel.), 161 *ff.*

As to revocation of *exequaturs*, see 8 John Adams' Works, 576; 9 *ibid.*, 6, 170.

"Consuls are indeed received by the Government from acknowledged sovereign powers with whom they have no treaty. But the exequatur for a consul-general can obviously not be granted without recognizing the authority from whom his appointment proceeds as sovereign. 'The consul,' says Vattel (book 2, chap. 2, § 34), 'is not a public minister; *but as he is charged with a commission from his sovereign*, and received in that quality by them where he resides, he should enjoy, to a certain extent, the protection of the law of nations.'

"If from this state of things the inhabitants of Buenos Ayres cannot enjoy the advantage of being officially represented before the courts of the United States by a consul, while the subjects of Spain are entitled to that privilege, it is an inequality resulting from the nature of the contest in which they are engaged, and not from any denial of their rights, as parties to a civil war. The recognition of them, as such, and the consequent admission of their vessels into the ports of the United States operates, with an inequality far more important, against the other party to that contest, and in their favor."

Mr. Adams, Sec. of State, to the President, Jan. 28, 1819. MSS. Report Book.

"The power of appointing consuls or vice-consuls is regarded as belonging, in the first instance, exclusively to the Government whose commercial interests are committed to their care. This power, however, is considered capable of being delegated to such persons and in such manner as may be deemed expedient by those from whom the authority must emanate. Before an exequatur can be granted by the President, recognizing a consul or vice-consul of any nation as entitled to exercise his official functions in this country, evidence should be laid before him that such officer is duly appointed, which could only be done, consistently with the views just expressed, by producing a commission, either directly from his Government or else from the authorized agent; in which latter case it should be accompanied by the instrument investing such agent with the necessary authority. This power of appointment is frequently conferred upon consuls-general, with or without limitation or modification, but is not necessarily or uniformly attached to their office."

Mr. McLane, Sec. of State, to Mr. Lederer, Feb. 28, 1834. MSS. Notes, For. Leg.

The action of the Spanish Government in refusing exequaturs to consuls, is final.

Mr. Forsyth, Sec. of State, to Mr. Eaton, Oct. 12, 1839. MSS. Inst., Spain.

The President, after commissioning a consul to whom the Government to whom the consul is sent objects, "will not revoke the commission unless he should be satisfied that the reasons for not receiving him were well founded and of a character to justify (that) Government in refusing an exequatur."

Mr. Marcy, Sec. of State, to Mr. Daniel, Nov. 7, 1853. MSS. Inst., Italy.
As to refusal of exequatur on grounds personal to consul, see Mr. Seward, Sec. of State, to Mr. Kirk, Apr. 27, 1864. MSS. Inst., Arg. Rep.

The insertion of conditions in an exequatur is unusual, and when applied to United States consuls abroad will be excepted to by the United States.

Mr. Fish, Sec. of State, to Mr. Sickles, Apr. 16, 1870. MSS. Inst., Spain.

An exequatur will not be issued to a consul sent by a foreign Government unless he presents a formal commission.

Mr. Marcy, Sec. of State, to Mr. Horner, Dec. 29, 1853; MSS. Notes, Arg. Rep. See Mr. Fish, Sec. of State, to Mr. Garcia, Jan. 23, 1872; *ibid.*

The exequatur of the Pontifical consul at New York appointed prior to 1871, will not be canceled on the sole ground of the absorption of the Pope's temporal power in that of Italy.

Mr. Fish, Sec. of State, to Baron Blanc, July 18, 1876. MSS. Notes, Italy.

"The provisions of existing consular treaties between the United States and foreign countries speak in general terms of the issuance of an 'exequatur' on recognizing consular officers, even when of lower grade than that of full consul. Inasmuch as it seems inexpedient that the exequatur, in the form of an official paper signed by the President and bearing the great seal of the United States, should respond to usual modes of appointment of foreign consular officers other than by a regular commission signed by the chief executive of the appointing state, and bearing its great seal, it has been deemed proper to issue a less conspicuously formal exequatur in the case of subordinate appointments made by the consuls-general or consuls of foreign powers in this country under their own signature and seal of office. This course, besides being more conformable to the principles of international etiquette, is understood to be in accordance with the course of recognition of like subordinate officers of the United States in foreign countries."

Mr. Evarts, Sec. of State, to Mr. Sherman, Dec. 12, 1879. MSS. Dom. Let.

"Where provisional notification is given the Government of the United States of the appointment of a consular officer pending formal presentation of his commission and application for an exequatur, no exequatur or certificate of recognition issues, but the Secretary of the Treasury is required to cause the officers of his Department to give temporary recognition to the acts of such consular officer. After a reasonable lapse of time, if no further action be taken confirmatory of the appointment, it is dropped from the record."

Mr. Blaine, Sec. of State, to Sir E. Thornton, May 29, 1881. MSS. Notes, Gr. Brit.

"The exercise of the undoubted right of withholding an exequatur is * * * an extreme one. In this country it is rarely resorted to."

Mr. Blaine, Sec. of State, to Mr. Morgan, May 31, 1881. MSS. Inst., Mex. See also same to same, June 29, 1881.

The refusal of an exequatur by a foreign Government, when not involving an invasion of the prerogatives of the United States under the law of nations, will not be excepted to.

Mr. Bayard, Sec. of State, to Mr. Cox, Apr. 29, 1886. MSS. Inst., Turkey. See same to same, Mar. 24, 1886; *ibid.*

"When a consul is appointed it is the practice of the Department of State to send the consular commission to the diplomatic representative in the country to which the consular district belongs, with instruc-

tions to apply in the proper quarter for an exequatur, by which the consular officer is officially recognized and authorized to discharge his duties. When the exequatur is obtained it is transmitted to the consular officer at his post, through the consulate-general, if there be one in the country, otherwise directly to his address. The consular commission is also sent to him at the same time. It is usual also to apply in the same manner for the exequaturs or formal recognition of subordinate officers. The practice in respect to such officers in the colonies or dependencies of a country is to instruct the consul-general, or the principal consular officer if there be no consul-general, to apply to the proper colonial authority for permission for the subordinate to act temporarily in his official capacity pending the result of the request for the exequatur. Upon the application of the consular officer, or of the consul-general when there is one, the diplomatic representative may make to the minister of foreign affairs such request for temporary permission to act in the case of any consular officer under his jurisdiction."

Printed Pers. Inst., Dip. Agents, 1885.

"Refusals to grant the exequatur are not uncommon. An English consul was refused by Russia, in the Caucasus, because it was alleged that he was hostile to the Russian Government, and had expressed strong opinions about Russian movements in Asia. In our own history, without going further back, a consul recently appointed to Beirut was rejected by Turkey, because he was a clergyman, and might be too much connected with missionaries; another was rejected by Austria on account of his political opinions, he having previously been an Austrian subject."

Schuyler's Am. Diplom., 96.

IV. *DISMISSAL.*

§ 116.

The exequatur of Mr. Duplaine, French vice-consul at Boston, was revoked, in October, 1793, for the reason that he had, "by an armed force, opposed the course of the laws of this country * * * by rescuing out of the hands of an officer of justice a vessel which he had arrested" by judicial process.

Mr. Jefferson, Sec. of State, to Mr. Monroe, Oct. 3, 1793. MSS. Inst., Ministers. See also letter of same date to Mr. Duplaine. MSS. Dom. Let. 1 Am. St. Pap. (For. Rel.), 178.

Under Jay's treaty each Government had the right of dismissing consuls for such reasons as it should itself think proper. But this did not preclude a dismissal based on special reasons of policy to be specially assigned.

1 J. Q. Adams' Mem., 157.

"The President of the United States requests the Secretary of State to give directions for preparing letters to the consul-general, and all the other consuls and vice-consuls of the French Republic throughout the United States, revoking their exequaturs, and a proclamation announcing such revocation to the public; the proclamation to be published,

and the letters expedited, as soon as the law shall be passed declaring the treaties and convention no longer obligatory."

President Adams to Mr. Pickering, Sec. of State, July 7, 1798. 8 John Adams' Works, 576.

The correspondence with Great Britain in 1856, relative to the withdrawal of exequaturs from consuls in consequence of their being concerned in illegal enlisting, will be found in Br. and For. St. Pap. for 1857-'58, vol. 48, 190, 214, 220, 226, 273, 290.

Mr. Bunch, British consul at Charleston at the beginning of the late civil war, having been instructed by his Goverment, in agreement with the French Government, to communicate to the authorities of the "so-called Confederate States the desire of those Governments that the second, third, and fourth articles of the Declaration of Paris should be observed by those States," entered upon such communication with the "Confederate authorities." This was sustained by his Government, who declined to recall him. The Government of the United States, for this, as well as for other reasons, revoked Mr. Bunch's exequatur.

Mr. Seward, Sec. of State, to Mr. Adams, Oct. 23, 1861. MSS. Inst., Gr. Brit. See *supra*, §§ 97, 105, 109; *infra*, § 119.

That recall of consul at request of Government to which he is sent is usual, see Mr. Fish, Sec. of State, to Aristarchi Bey, Dec. 11, 1876. MSS. Notes, Turkey.

Consuls are approved and admitted by the local sovereign. If guilty of illegal or improper conduct their exequatur may be revoked, and they may be punished, or sent out of the country, at the option of the offended Government.

Coppell *v.* Hall, 7 Wall., 542.

If a consul be guilty of illegal or improper conduct he is liable to have his exequatur revoked and to be punished according to the laws of the country in which he is consul, or he may be sent back to his own country, at the discretion of the Government which he has offended.

2 Op., 725, Butler, 1835.

V. *NOT ORDINARILY DIPLOMATIC AGENTS.*

§ 117.

"Consuls are not diplomatic characters, and have no immunities whatever against the laws of the land; and hence they can be prosecuted for breach of neutrality laws."

Mr. Jefferson, Sec. of State, to Mr. Gore, Sept. 2, 1793. MSS. Dom. Let.

A consul-general, resident as such in the United States, is not entitled to be regarded as a "diplomatic representative."

Circular of Mr. Van Buren, Sec. of State, May 5, 1830. MSS. Dom. Let.

A consul-general, by the law of nations, is not entitled to any diplomatic immunity; nor is he by the treaty between the United States and Great Britain.

Mr. Seward, Sec. of State, to Mr. Bates, Nov. 21, 1865. MSS. Dom. Let. See *supra*, § 92.

"Consuls have diplomatic functions in Barbary States. The United States consul is accredited to the Emperor of Morocco." But such consuls yield as to precedence to ministers plenipotentiary from other sovereigns.

Mr. Seward, Sec. of State, to Mr. McMath, Dec. 30, 1868. MSS. Inst., Barb. Powers. See Mr. Davis, Asst. Sec. of State, to Mr. Vidal, July 10, 1873. *Ibid.*

"In our treatment of foreign consuls in this country, while we recognize that as a general rule consuls are not entitled to diplomatic exemptions, we admit the principle of reciprocal treatment, and indeed take the initiative in giving to foreign consuls all rational exemptions in matters dependent on their official position, especially when they are not engaged in business. A consul not transacting business, or holding property here in his personal capacity, is not taxed by reason of his official residence, and the official supplies sent to him are exempt from customs duties; but these exemptions should be reciprocal and depend on our consuls receiving like treatment in the foreign country.

"It seems desirable to a full consideration of the question that the British rule should be known, and in the event of its being different from ours, that a definite understanding should be had between the two Governments."

Mr. Bayard, Sec. of State, to Mr. Phelps, July 21, 1885. MSS. Inst., Gr. Brit.

It is not competent for a consul, without the special authority of his Government, to interpose a claim on account of the violation of the territorial jurisdiction of his country.

The Anne, 3 Wheat., 435.

In the absence of other representatives, consuls are entitled to represent their fellow countrymen in a foreign court of admiralty without special authority; though they cannot, without special authority, receive restitution of the property in litigation.

The Bello Corunnes, 6 Wheat., 152.

While a consul of a foreign power is not entitled to represent his sovereign in a country where the sovereign has an ambassador, he is entitled to intervene for all subjects of that power interested.

Robson *v.* The Huntress, 2 Wall., jr., 59.

As a general rule a consul is not entitled by the law of nations to the immunities and privileges of an ambassador or public minister.

Gittings *v.* Crawford, Taney's Decis., 1.

Consuls, unless otherwise provided by treaty, are entitled to no diplomatic privileges.

1 Op., 41, Bradford, 1794; 2 *ibid.*, 378, Berrien, 1830.

A consul is not such a public minister as to be entitled to the privileges appertaining to that character, nor is he under the special protection of the law of nations. He is entitled to privileges to a certain extent, such as safe-conduct, but he is not entitled to the *jus gentium*. It may be considered as settled law that consuls do not enjoy the protection of the law of nations any more than any other persons who enter the country under a safe-conduct.

2 Op., 725, Butler, 1835.

Consuls do not enjoy the privilege of extraterritoriality.

7 Op., 18, Cushing, 1854.

When a consul is appointed chargé d'affaires, he has a double political capacity; and though invested with full diplomatic privileges, he becomes so invested as chargé d'affaires, not as consul.

7 Op., 342, Cushing, 1855. See *supra*, § 88.

Such extraterritoriality as consuls enjoy in the Mohammedan states, for example, is due to the fact that these states are not admitted to a full community of international law with the nations of Christendom, and not to the consular office. The institution of consuls originated in the mere fact of differences in law and religion, at that period of modern Europe in which it was customary for distinct nationalities, coexisting under the same general political head, and even in the same city, to maintain each a distinct municipal government. Such municipal colonies, organized by the Latin Christians, and especially by those of the Italian Republics in the Levant, were administered, each by its *consuls*, or proper municipal magistrates, whose commercial relation to the business of their countrymen was a mere incident of their general municipal authority. The authorization of a consul to communicate directly with the Government near which he resides does not endow him with the diplomatic privileges of a minister.

7 Op. 342, Cushing, 1855.

Private extraterritoriality, as to consuls, has fallen into desuetude among the Governments of Christendom; but it is still claimed by us in our intercourse with non-Christian nations, though not conceded to their consular officers in the United States.

Ibid.

In the United States Consular Regulations, as revised in 1881, it is stated that "a consular officer in civilized countries now has, under public law, no acknowledged representative or diplomatic character as regards the country to which he is accredited. He has, however, a certain representative character as affecting the commercial interests

of the country from which he receives his appointment, and there may be circumstances, as, for example, in the absence of a diplomatic representative, which, apart from usage, make it proper for him to address the local government upon subjects which relate to the duties and rights of his office, and which are usually dealt with through a legation." In section 76, "Although consuls have no right to claim the privileges and immunities of diplomatic representatives, they are under the special protection of international law, and are regarded as the officers both of the state which appoints and the state which receives them. The extent of their authority is derived from their commission and their exequatur; and it is believed that the granting of the latter instrument, without express restrictions, confers on the consul rights and privileges necessary to the performance of the duties of the consular office; and, generally, a consul may claim for himself and his office, not only such rights and privileges as have been conceded by treaty, but also such as have the sanction of custom and local law, and have been enjoyed by his predecessors, or by consuls of other nations, unless a formal notice has been given that they will not be extended to him."

"A consul may place the arms of his Government over his doors. Permission to display the national flag is not a matter of right, though it is usually accorded, and it is often provided for by treaty. * * * The jurisdiction allowed to consuls in civilized countries over disputes between their countrymen is voluntary and in the nature of arbitration, and it relates more especially to matters of trade and commerce. A consul, however, under public law, is subject to the payment of taxes and municipal imposts and duties on his property in the country or on his trade, and generally to the civil and criminal jurisdiction of the country in which he resides. It is probable, if he does not engage in business, and does not own real estate, that he would not be subject to arrest or incarceration, except on a criminal charge, and in the case of the commission of a crime, he may either be punished by local laws, or sent back to his own country."

"The privileges of a consul who engages in business in the country of his official residence, are, under international law, more restricted, especially if he is a subject or citizen of the foreign state."

It is added that inviolability of the consular archives is secured by treaties with Austria-Hungary, Belgium, Denmark, France, Germany, Greece, Mexico, Portugal, and Sweden; while inviolability of the consular office and dwelling (but not as an asylum) is secured by treaties with Belgium, France, Germany (of consuls not citizens), and Italy. Exemption from arrest, except for crimes, is secured by convention with Belgium, Germany, Netherlands, and Italy. "In Austria-Hungary and France he is to enjoy personal immunities; but in France, if a citizen of France, or owning property there, or engaged in commerce, he can claim only the immunities granted to other citizens of the country who own property, or to merchants. In Austria-Hungary, if engaging in business, he can be detained only for commercial debts. * * * In Great Britain, Netherlands (as to colonies), Nicaragua, and Paraguay, they are regarded as appointed for the protection of trade."

U. S. Cons. Reg., §§ 75, 76, 77, 78.

VI. *VICE-CONSULS AND CONSULAR AGENTS.*

§ 118.

It is not usual to grant an exequatur to any officer below the grade of vice-consul.

Mr. Forsyth, Sec. of State, to Prince Metternich, Dec. 26, 1834. MSS. Notes, Germ. St. See Mr. Forsyth, Sec. of State, to Mr. Lederer, Feb. 3, 1838; *ibid.*

"Consuls of the United States have no right to appoint vice-consuls," and "the consular agents they are authorized to constitute are not regarded as officers of the Government or as entitled to any privileges or immunities from the Governments within whose territories they may exist.

Mr. Forsyth, Sec. of State, to Mr. Morelli, June 20, 1837. MSS. Notes, Italy. See same to same, Nov. 16, 1836.

"A consular agent, as you are aware, is not, strictly speaking, a United States officer, being merely the agent of the consul from whom he receives his appointment, though, pursuant to a regulation here long established, the consuls must report the names of the agents, whom they appoint, to this Department for approval. This Government does not ask the foreign Government within whose territory they reside to receive and recognize them as its officers or agents. They are not entitled to a consular flag, and may not use any insignia of office contrary to the laws of the country where they are. (*See App., Vol. III*, § 118.)

"It was Mr. Webster's opinion that 'the consuls of the United States have no authority to appoint *vice-consuls*, they being expressly instructed to appoint *consular agents* at such places within their consular jurisdiction as they may deem necessary;' and also that a 'a consular agent stands in the same relation that any citizen would hold under similar circumstances, and it is as a citizen of the United States only that he can be considered, and not as an officer acting under the authority of the United States.'"

Mr. Hunter, Asst. Sec. of State, to Mr. Everett, May 28, 1855. MSS. Dom. Let.

Consular agents are now not appointed by consuls, but are nominated by them and approved by the consul-general, if there be one, in the country to which the consul is accredited, and receive a certificate of appointment from the Secretary of State.

U. S. Cons. Reg., 1881.

A "deputy consul-general" is not a "consular officer" whose action validates a marriage under the act of June 22, 1860 (Rev. Stat., § 4082).

Mr. Fish, Sec. of State, to Mr. Beardsley, Jan. 30, 1874. MSS. Inst., Barb. Powers. See as to marriage more fully, *infra*, §§ 260 *ff.*; Printed Pers. Inst., Dip. Agents, § 137.

The practice in the United States, on notification of the appointment by a foreign consul-general of a vice-consul, or a consular agent, is for the President to require a formal certificate of appointment by the Government represented by such vice-consul or agent, though it will be sufficient if it appear that the appointment was made by the consul-general in conformity with the laws of his country.

Mr. Evarts, Sec. of State, to Mr. Shishkin, Nov. 14, 1879. MSS. Notes, Russia.

Exequaturs do not issue to consular agents or vice-consuls. "Orders to the Federal officers of the district where the appointee's functions are exercised are deemed sufficient recognition."

Ibid.

The practice of the British Government is not to submit the commissions of "pro-consuls," or to ask for their recognition from the Government within whose jurisdiction they are to act. "Unless Her Majesty's Government should be pleased to adopt a different course in this regard hereafter, the pro-consuls will continue to be omitted from the list of regularly recognized consular officers."

Mr. Blaine, Sec. of State, to Sir E. Thornton, May 29, 1881. MSS. Notes, Gr. Brit.

Vice-consuls are competent to hold consular courts in China when duly appointed or approved as such by the Secretary of State. (See act of February 1, 1876, amending Rev. Stat., § 4130.)

7 Op., 495, Cushing, 1855. See *infra*, § 125.

A substitute or vice-consul, left in charge of the consulate during the temporary absence of the consul, is to be compensated out of the statute emoluments of the office, subject to regulations of the Department. An acting consul in charge of a consulate during actual vacancy of the consulate, is entitled to receive the statute compensation of the office.

7 Op., 714, Cushing, 1856.

Section 3 of act of 1866 (Rev. Stat., § 1729) is limited to unsalaried consuls and commercial agents, and does not embrace consular agents.

12 Op., 97, Stanbery, 1866.

VII. *NOT TO TAKE PART IN POLITICS.*

§ 119.

Interference by a consul of the United States in the political affairs of the country of his residence will be a sufficient ground for his recall.

Mr. Forsyth, Sec. of State, to Mr. Hunter, Nov. 16, 1836. MSS. Inst., Brazil.

"It is a standing instruction to United States consuls abroad to abstain from interference in the political affairs of the countries in which they reside."

Mr. Cass, Sec. of State, to Mr. Bertinatti, Nov. 16, 1859. MSS. Notes, Italy.

"It (your dispatch) was accompanied by Earl Russell's reply to the note which, in execution of my instructions, you addressed to him on the subject of the detention of a bearer of dispatches sent by Robert Bunch, Her Majesty's consul at Charleston, and the substitution by me of another person to convey his consular bag to Great Britain.

"Earl Russell says, in his note, that if it had been true (as we apprehended) that Mr. Bunch had inserted into his official bag and covered with his official seal the correspondence of the enemies of this Government in the United States, he would have been guilty of a grave breach of his duty towards his own Government and that of the United States. Earl Russell says also, that on the opening of the bag at the foreign office (in London) no ground for that suspicion was revealed.

"These declarations, made with unquestioned candor and freedom, are entirely satisfactory upon the main point involved in your note. It is, therefore, a pleasant duty for me to instruct you to reply to Earl Russell that this Government regrets the interruption of the passage of the consular dispatches, which has occurred in consequence of a mistaken suspicion that the agent who transmitted them was abusing the confidence of the two Governments. I sincerely hope that no serious inconvenience resulted from the delay.

"Earl Russell, after making the explanations which I have quoted, proceeds to remark that Her Majesty's Government was advised that the suspicion of the conveyance by post of letters from British subjects between the Northern States and the Southern States was in contravention of the treaty on this subject contracted between the two Governments; that Her Majesty's Government had been, nevertheless, unwilling to press this view on the United States; but that this stoppage of the post has occasioned great inconvenience to individuals. His lordship then submits a copy of a note which Mr. Bunch had written to the under-secretary of state, showing the mode in which he had endeavored to palliate the evil by inclosing private letters in his official bag. His lordship then dismisses the subject, saying that he shall address any further communication he may have to make thereon to Lord Lyons.

"Mr. Bunch, in his note, states that he incloses in the bag, to the under-secretary's address, certain letters which are intended for the post, and that they are principally letters of servants, governesses, &c., British subjects, which, owing to the discontinuance of the post, they are unable to send in any other way; also, that some of the letters contain dividends, the property of British subjects, which they could scarcely receive without Mr. Bunch's intervention. He adds that he hopes that there is no irregularity in this proceeding, since no expense of postage is incurred, because the bag in which the letters are contained goes by a private hand to Liverpool. I read this note under the light thrown upon it by the explanations of Earl Russell, which show that the whole correspondence contained in the bag was innocent.

"In these circumstances, what remains open to special exception in Mr. Bunch's proceeding is his substitution of his consular bag and official seal for the mail bag and mail locks of the United States, and of his own mail carrier for the mail carriers of the United States.

"The proceeding of the consul in these respects certainly is not defensible on any ground of treaty or international law; nor does Earl Russell in any way imply that he deems it is so. The proceeding, however, was practically harmless, and it is not likely to be repeated."

Mr. Seward, Sec. of State, to Mr. Adams, Oct. 22, 1861. MSS. Inst., Gr. Brit.; Dip. Corr., 1861. See *supra*, §§ 97, 105, 116.

VIII. *PRIVILEGES AS TO PROCESS.*

§ 120.

"It is believed that under the laws and usages of France favors and exemptions are extended to foreign consuls, and that in conducting his defense Mr. Croxall's proper course [in a proceeding against him for assault] would have been to plead the privileges of his official character. However this may be, the imprisonment of an American consul residing in a foreign port is a serious evil and inconvenience, not only as lessening his influence as an officer of his Government, but as calculated to produce, in some cases, injurious effects on the interests of American citizens confided to him, and to reflect dishonor on his country. It is, also, an infraction of the law of nations. Vattel says (vol. 2, chap. 2, § 34) that a sovereign 'by the very act of receiving a consul, tacitly engages to allow him all the liberty and safety necessary in the proper discharge of his functions, without which the admission of the consul would be insignificant and deceptive.' And, again, speaking of consular functions, the same author observes that 'they seem to require that the consul should be independent of the *ordinary criminal justice* of the place where he resides, so as not to be molested or imprisoned, unless he himself violates the law of nations by some enormous misdemeanor.' Our Constitution recognizes this doctrine by providing that in all cases affecting consuls the Supreme Court alone shall have original jurisdiction."

Mr. Forsyth, Sec. of State, to Mr. Cass, Dec. 6, 1836. MSS. Inst., France. As to diplomatic privileges, see *supra*, §§ 92 *ff.*

"If, however, as appears to have been the fact, he (Mr. Croxall) stood upon the same ground as all other foreign consuls whose Governments had not entered into conventional stipulations with France to secure to those functionaries certain privileges and immunities, the United States have no special reason to complain of the course of proceeding against him. * * *

"So far as regards the civil action the United States do not assert the right to interfere, except in cases of gross injustice, of which the

French tribunals, the President believes, are incapable. Whether the arrest and detention were on the civil or criminal process is not yet understood. On the whole the President thinks it proper to leave the subject to your discretion, to be pursued or terminated, as you may deem best, with this suggestion, however, that the occasion be taken to establish the understanding that whenever a consul of either party shall be the subject of criminal prosecution requiring restraint upon him, and thus interfering with his official duties, the Government proceeding against him shall give notice to the diplomatic representative of the other party of the charge against the consul, that such arrangements for the performance of the consular duties, pending the investigation, may be made as the honor and interest of his Government may require.

"To remove a doubt which you seem to have on the subject, it may be proper to state that the clause in the Constitution of the United States which gives to the Supreme Court original jurisdiction in all cases affecting embassadors, other public ministers, and consuls resident here, has been construed not to mean exclusive jurisdiction, and that Congress has vested power in inferior courts of the United States for the trial and punishment of offenses committed by such foreign agents in violation of the laws of the country or the laws of nations."

Mr. Forsyth, Sec. of State, to Mr. Cass, Apr. 13, 1838. MSS. Inst., France.

A foreign consul is liable to be punished to the same extent as other foreign residents for a criminal violation of the local law of the country in which he resides.

Mr. Clayton, Sec. of State, to Mr. Calderon de la Barca, Aug. 28, 1849. MSS. Notes, Spain.

A French consul in the United States is by treaty privileged from compulsory detention in court as a witness, and if such attendance be unadvisedly enforced, he should be discharged and a due apology made to the French Government.

Mr. Marcy, Sec. of State, to Mr. Mason, May 30, 1854; June 8, 1854; July 14, 1854; Sept. 11, 1854; Dec. 13, 1854; Jan. 18, 1855. MSS. Inst., France. See *supra*, § 98.

A refusal to attend for examination, without obvious good reason, would be the ground for application to the French Government for interference.

Same to same, Jan. 18, 1855. *Ibid.* See *supra*, § 98.

"Without discussing the question whether Portuguese consuls have all the rights and privileges of French consuls in the United States, subsequently to the consular convention of February 23, 1853, between this country and France, the undersigned will consider the case of the Portuguese consul in New York on the assumption that the provisions of that convention applied to him.

"Upon this assumption the Portuguese consul would not be subjected to compulsory process for the purpose of procuring his attendance as a witness in court, unless he was required to give evidence for the defendant in a criminal prosecution."

Mr. Marcy, Sec. of State, to Mr. De Figaniere, Mar. 27, 1855. MSS. Notes, Portugal. See *supra*, § 98.

"A consul in the United States or Great Britain is subject to arrest for debt, whether engaged in trade or not. If engaged in trade he becomes subject to all the local remedies as between mercantile creditors and mercantile debtors. Of course he is subject, if bankrupt, to the process of bankruptcy commission *in invitum*, and the consequent forced seizure of his assets, including choses in action, which in case of his legally declared bankruptcy pass to the bankruptcy administrator just as, if dead, the assets would pass to a probate administration. Such being the course of proceedings in regard to an involuntary bankrupt, the case is still stronger in the case of a voluntary bankrupt, and a petitioner for the benefits of the bankrupt law. He becomes subject to the local jurisdiction and to all its lawful decrees appertaining to the debts and credits of the bankrupt, including the enforced surrender of choses in action. Such are the principles which are applicable to the case which you have presented for the consideration of this Department."

Mr. Seward, Sec. of State, to Mr. Fuller, Mar. 23, 1861. MSS. Dom. Let.

A consul from Hanover carrying on trade at San Francisco is not entitled to exemption from testifying in a San Francisco court.

Mr. Seward, Sec. of State, to Judge Hoffman, July 22, 1862. MSS. Dom. Let.

When a consul for a foreign state declines to appear as a witness before the courts of the country, when duly summoned, his exequatur may be revoked. [In this case he was not privileged by treaty from testifying. The question whether he could not have been compelled to appear by attachment does not appear to have been raised.]

Janssen's case, Senate Ex. Doc. 1, spec. sess. U. S. Senate, 1867. Report of Mr. Seward, Sec. of State, Mar. 28, 1867.

In Mr. Seward's report in this case the opinion of Mr. E. P. Smith, examiner of claims, is given as follows: "This Government instructs its consular officers, even where, as in France, there is a treaty stipulation that they shall not be compelled to appear as witnesses before the courts, that it is nevertheless their duty, on invitation, to appear and give their testimony, unless necessarily prevented; that they have no right on account of their official position or disinclination, or personal inconveniences, to refuse compliance with such invitation, and that a refusal without good cause therefor will be regarded as an act of disrespect toward the Government within whose jurisdiction the con-

sul resides, and as a sufficient reason for his removal. (Consular Manual, sections 639 and 641.)

"The United States expect from the consular officers of foreign powers the same respect for the courts, and the same readiness to contribute their testimony, when invoked in the administration of justice, which we enjoin upon our own officers. Especially is this expected from consuls engaged in commerce, as was Mr. Janssen."

"It is settled that it is the privilege of the Government of Italy, not merely the personal privilege of the consul, that its consul should be impleaded only in a Federal court. * * *

"The Executive has no capacity to control or influence the deliberations of any court, State or Federal. If it shall be made to appear after the consul has fairly presented his case and prosecuted his defense to the court of last resort that manifest error has intervened and has not been corrected, it may then become the duty of the executive Government to consider its obligation to repair the wrong. Meantime, it is the duty of the consul to avail himself of the means of defense which our jurisprudence affords, and not contribute by his own negligence to an erroneous decision."

Mr. Fish, Sec. of State, to Mr. de Colobiano, Dec. 22, 1869. MSS. Notes, Italy.

A person employed as interpreter to the United States consulate at Tangiers, though a British subject, is not within British consular jurisdiction at that place, "because he is in the service of an officer of the United States accredited to the Emperor of Morocco, and who, as such, according to the usage of that country, is entitled to privileges of extraterritoriality, one of which is the exemption of his servants, including his interpreter, from any other jurisdiction than his own."

Mr. Fish, Sec. of State, to Sir E. Thornton, Apr. 5, 1872. MSS. Notes, Gr. Brit.

"On the 14th of November, 1788, before this Government went into operation [a consular convention] was concluded with France. There were, however, such difficulties attending the observance of its stipulations on our part that its repeal, together with that of other treaties with that country, by the act of Congress of the 7th of July, 1798, was not regretted here. It is not unlikely that, combined with other causes, the inconveniences experienced from that convention disinclined this Government from concluding another of the same character until that of the 4th of May, 1850, with New Granada. This was followed by the consular convention with France of the 23d of February, 1853. This last instrument had scarcely gone into effect, however, when an unlucky oversight in the second article, stipulating the exemption of consuls from arrest, occasioned much trouble and some anxiety to the Department. You will notice that the exemption is absolute and unqualified. The sixth amendment to the Constitution of the United States, however, provides that an accused party shall have compulsory process for ob-

taining witnesses in his favor. The Mexican consul at San Francisco being on trial for a violation of the neutrality act of 1818, required the testimony of the French consul for his defense. The latter was subpœnaed accordingly, but, refusing to obey, was forcibly required to appear in court. His Government complained of this as a breach of the convention, and though the privilege of the Mexican consul was claimed to be superior to the concession in that instrument, this was not acquiesced in by the French Government, which required their flag, when raised to the mast-heads of certain of their men-of-war at San Francisco, to be saluted as a reparation for the alleged indignity to their consul. It is, of course, desirable that in any future consular convention no such oversight should be committed. Special pains have been taken to avoid it in the consular convention with Italy of the 8th February, 1868, which you may adopt as the general pattern of that which you are authorized to conclude."

Mr. Fish, Sec. of State, to Mr. Bassett, Oct. 18, 1872. MSS. Inst., Hayti. See more fully, *supra*, § 98.

"In countries with which the United States have treaty stipulations providing for assistance from the local authorities, consular officers are instructed that it is undesirable to invoke such interposition, unless it is necessary to do so. In cases of arrest and imprisonment, they will see, if possible, that both the place of confinement and the treatment of the prisoners are such as would be regarded in the United States as proper and humane. If a request for assistance is refused, the consular officer should claim all the rights conferred upon him by treaty or convention, and communicate at once with the diplomatic representative in the country, if there be one, and with the Department of State. When such requests are made in accordance with long-established usage, he should, when they are refused, make suitable representations to the proper local authority, and likewise advise the legation and the Department."

Printed Pers. Inst., Dip. Agents, 1885.

The exemption of consuls in the United States from suits in the State courts is not a personal privilege, but a privilege that attaches to their official character; and an omission to plead it is not a waiver of it.

Davis *v.* Packard, 7 Pet., 276.

A foreign consul's privilege to be sued only in a Federal court is not personal, but belongs to the sovereign whom he represents.

Durand *v.* Halbach, 1 Miles (Phila.), 46.

Though not entitled to represent his sovereign in a country where the sovereign has an ambassador, a consul is entitled to intervene for all subjects of that power interested.

Robson *v.* The Huntress, 2 Wall., jr., 59.

Under the act of 18th August, 1856 (11 Stat., 56; Rev. Stat., § 1738), which provides that "no consular officer shall exercise diplomatic functions in any case, unless expressly authorized by the President so to

do," a retiring minister cannot install a consul in charge of the legation, nor can the consul receive the pay provided by law for a chargé d'affaires.

Otterbourg *v.* U. S., 5 C. Cls., 430.

Both circuit and district courts of the United States have jurisdiction of suits brought against foreign consuls.

Saint Luke's Hospital *v.* Barclay, 3 Blatch., 259; Graham *v.* Stucken, 4 Blatch., 50; Bixby *v.* Janssen, 6 Blatch., 315; Gittings *v.* Crawford, Taney's Decis., 1.

While State courts have no jurisdiction of suits against foreign consuls, they may assume jurisdiction of suits commenced by consuls.

Sagory *v.* Wissman, 2 Benedict, 240.

Where a foreign consul files a bill in equity in a State court, it seems the court may entertain a cross-bill.

Ibid.

It has been held that a foreign consul may be arrested in the United States circuit court, under the acts of February 28, 1839 (5 Stat., 321), and January 14, 1841 (5 Stat., 410, Rev. Stat., § 990), and the New York code of procedure, in a suit for money recovered by him in a fiduciary capacity. It was held also that the pendency of a former suit in a State court is no defense to a second suit for the same cause of action in the Federal court, as the State court had no jurisdiction.

McKay *v.* Garcia, 6 Benedict, 556.

Consular privilege cannot protect a consul as to mercantile matters engaged in by him independent of his official business.

1 Kent, 44, 62; 2 Phill., 335; Arnold *v.* Ins. Co., 1 Johns., 363; Griswold *v.* Ins. Co., 16 Johns., 346; Indian Chief, 1 C. Rob. (Adm.), 26.

A consul is not a public minister, nor entitled to the privileges attached to the person of such an officer.

1 Op., 41, Bradford, 1794.

The President has no authority to interpose in a suit against a consul, though it be of a public nature and concern the consul's Government. A consul is not privileged from legal process by the law of nations, nor is the French consul-general by the consular convention between the United States and France, of 1788, though the process against him is limited to Federal courts.

1 Op., 77, Lee, 1797.

Foreign consuls and vice-consuls are not public ministers within the law of nations, or the acts of Congress, but are amenable to the civil jurisdiction of the courts. But they are bound to appear only in the Federal courts, the State courts being excluded by the Constitution and laws.

1 Op., 406, Wirt, 1820.

Foreign consuls in the United States are entitled to no immunities not possessed by foreigners coming into this country in a private capacity, except that of being sued and prosecuted exclusively in the Federal courts. And, in addition, if guilty of any illegal or improper conduct, they are liable to the revocation of their exequatur and to be punished according to our laws; or to be sent back to their own country, at the discretion of the Government.

2 Op., 725, Butler, 1835.

Foreign consuls are subject to criminal process for the violation of the municipal laws. In addition to the ordinary means of redress, the President may, in his discretion, withdraw the exequatur.

7 Op., 367, Cushing, 1855.

Citizens of the United States who hold foreign consulates in the United States are not exempt from jury duty or service in the militia by the law of nations.

8 Op., 169, Cushing, 1856. Adopted in Lawrence's Wheaton, (ed. 1863,) 430.

"By convention with Belgium, Germany, Netherlands, and Italy, the consul is exempted from arrest, except for crimes. By treaty with Turkey he is entitled to suitable distinction and necessary aid and protection. In Muscat he enjoys the inviolability of a diplomatic officer. In Austria-Hungary and France he is to enjoy personal immunities; but in France, if a citizen of France, or owning property there, or engaged in commerce, he can claim only the immunities granted to other citizens of the country who own property, or to merchants. In Austria-Hungary, if engaging in business, he can be detained only for commercial debts. In Colombia the consuls of the United States have no diplomatic character. In Great Britain, Liberia, Netherlands (as to colonies), Nicaragua, and Paraguay, they are regarded as appointed for the protection of trade.

"Exemption from obligation to appear as a witness is secured absolutely by convention with France; and, except for defense of persons charged with crime, by conventions with Austria-Hungary, Belgium, Italy, and Salvador. In such case the testimony may be taken in writing at his dwelling. If the consul claims this privilege, he should, in such case, offer to give his evidence in the mode prescribed by the particular convention, and should throw no impediment in the way of the proper administration of justice in the country of his official residence.

"When the consul is not a citizen of the country in which the consulate is situated, and does not own real estate therein, and is not engaged in business therein, he is secured against the liability to taxation by treaties or conventions with Austria-Hungary, Belgium, Bolivia, Denmark, Ecuador, France, Germany, Hayti, Italy, the Netherlands (and colonies), Peru, Salvador, Colombia, and Mexico; and in Germany the official income of a consul is not taxable, but in the Dominican Republic, the Orange Free State, Persia, Portugal, the Hawaiian Islands, Russia, and Switzerland, if they engage in business they are subject to the laws of the country. And, in general, if a consular officer engages in business or owns property in the country of his official residence, he cannot claim other exemptions in respect of such busi-

ness or property than are accorded to citizens or subjects of the country.

"If not citizens of the country of their consular residence, or domiciled at the time of the appointment in it, the exemption from military billetings or service is secured by conventions with Austria-Hungary, Belgium, France, Germany, Netherlands, and Italy; and the exemption from all public service is secured by treaties with Denmark, Germany, Peru, San Salvador, Colombia (New Granada), and Mexico. In Colombia, the exemption also extends to officers, secretaries, and attachés."

U. S. Cons. Reg., 1881, §§ 86 *ff.*

IX. *OTHER PRIVILEGES.*

§ 121.

"There is believed to be no difference between the death of a consul and that of any other private foreigner in respect to his effects. The consular office is not known to create any. Upon the death of any foreigner, whether consul or not, if he has left no family nor relations to take charge of his estate at the place of his death, a practice prevails to allow the consul of the country of the deceased to put his official seal upon the effects of the deceased, until the local law operates upon them by a grant of administration, or if no such administration be granted, for the purpose of transmission to the kindred of the deceased."

Mr. Clay, Sec. of State, to Mr. Vaughan, Nov. 12, 1827. MSS. Notes, For. Leg.

How far a superseded consul can be compelled to deliver up the office papers to his successor is a question for the local judiciary.

Mr. Livingston, Sec. of State, to Mr. Tacon, June 8, 1831. MSS. Notes, For. Leg. See Mr. Livingston to Mr. Tacon, June 16, 1831; *ibid.* See *supra*, §§ 98 *ff.*

The Government of the United States will insist upon reparation for any personal injustice inflicted on one of its consuls in a foreign state.

Mr. Forsyth, Sec. of State, to Mr. Hunter, Apr. 14, 1837. MSS. Inst., Brazil.
Mr. Upshur, Sec. of State, to Mr. Proffit, Aug. 1, 1843; *ibid.*

"Ministers and consuls of foreign nations are the means and agents of communication between us and those nations, and it is of the utmost importance that while residing in the country they should feel a perfect security so long as they faithfully discharge their respective duties and are guilty of no violation of our laws. This is the admitted law of nations, and no country has a deeper interest in maintaining it than the United States. Our commerce spreads over every sea, and visits every clime, and our ministers and consuls are appointed to protect the interests of that commerce, as well as to guard the peace of the country and maintain the honor of its flag. But how can they discharge these duties unless they be themselves protected, and, if protected, it must be by the laws of the country in which they reside. And what is due

to our own public functionaries residing in foreign nations is exactly the measure of what is due to the functionaries of other Governments residing here. As in war the bearers of flags of truce are sacred, or else wars would be interminable, so in peace embassadors, public ministers, and consuls charged with friendly national intercourse are objects of especial respect and protection, each according to the rights belonging to his rank and station. In view of these important principles, it is with deep mortification and regret I announce to you that, during the excitement growing out of the executions at Havana, the office of Her Catholic Majesty's consul at New Orleans was assailed by a mob, his property destroyed, the Spanish flag found in the office carried off and torn in pieces, and he himself induced to flee for his personal safety, which he supposed to be in danger. On receiving intelligence of these events, I forthwith directed the attorney of the United States, residing at New Orleans, to inquire into the facts and the extent of the pecuniary loss sustained by the consul, with the intention of laying them before you, that you might make provision for such indemnity to him as a just regard for the honor of the nation and the respect which is due to a friendly power might, in your judgment, seem to require. The correspondence upon this subject between the Secretary of State and Her Catholic Majesty's minister plenipotentiary is herewith transmitted.

"The occurrence at New Orleans has led me to give my attention to the state of our laws in regard to foreign embassadors, ministers, and consuls.

"I think the legislation of the country is deficient in not providing sufficiently either for the protection or the punishment of consuls. I therefore recommend the subject to the consideration of Congress."

President Fillmore, Second Annual Message, 1851. (Mr. Webster, Sec. of State.)
See, as to this case, *infra*, § 226.

In extreme cases, where the privileges of a consulate are invaded, the flag of the United States may be struck by the consul, and all friendly intercourse with the authorities of the residence suspended.

Mr. Webster to Mr. McCauley, April 20, 1852. MSS. Inst., Barb. Powers.
As to action of French Government in this respect, see *supra*, § 98; *infra*, § 315.

"The consuls of the United States are authorized and requested to act as administrators on the estates of all citizens of the United States dying intestate in foreign countries and leaving no legal representative or partner in trade. Indeed, this is one of the most sacred and responsible trusts imposed by their office, and in this respect they directly represent their Government in protecting the rights and interests of the representatives of deceased citizens. The consul of the United States, therefore, was the only person who could legally touch the property left by the deceased Parsons; it was his duty to deposit the pro-

ceeds thereof in the Treasury of the United States, there to await the decision of the proper authorities as to its final disposition."

Mr. Marcy, Sec. of State, to Mr. Aspinwall, Aug. 21, 1855. MSS. Dom. Let.

For a consul to insert into his official bag and cover with his official seal the correspondence of the enemies of a belligerent power with which his own Government is at peace, is a grave breach of duty towards his own Government and that of the offended belligerent.

Mr. Seward, Sec. of State, to Mr. Adams (quoting Earl Russell), Oct. 22, 1861. MSS. Inst. Gr. Brit. Dip. Corr., 1861. This instruction is given in full, *supra*, § 119.

Insults by a foreign Government to a consul, or encroachments by it on his rights, will justify a demand that in addition to other redress, "the flag of the United States shall be honored with a salute."

Mr. Seward, Sec. of State, to Mr. Harvey, Nov. 29, 1861. MSS. Inst., Portugal. *Infra*, § 315.

The search of the person of a foreign consul, his imprisonment, and the carrying off of his archives by the general in command of the United States Army in a captured city, is a violation of the law of nations for which the Government of the United States considers itself bound to apologize, and to give all other suitable redress.

Mr. Seward to Mr. Van Limburg, June 3, 1862. MSS. Notes, Netherlands. Same to same, Aug. 20, 1862; Sept. 4, 1862.

"So far as the protection of this Government may be requisite to enable a consular agent, whose appointment may have been approved by the local authorities, to discharge his official duties, that protection will be given. The United States, however, will not undertake to guarantee the business or safety of any alien in a foreign country, who, as he owes them no lawful allegiance, can not on that account lawfully claim protection from them."

Mr. Fish, Sec. of State, to Mr. Mathews, Oct. 2, 1872. MSS. Inst., Barb. Powers.

"It is proper to say in reply that the subject of the settlement of the estates of others than citizens of the United States, deceased abroad, is one with which the Department has no official concern; and where a consular officer is employed and empowered by the parties interested and he undertakes to act for them, he does so wholly in his individual capacity and not as an officer of the Government. While the Department is frequently asked to give the names of its officers with a view to their being employed in such a settlement, it does not undertake, in complying with these requests, to assume any responsibility for the manner in which the business is performed. Should it happen that delay or mismanagement ensue, proceedings must be taken, if at all, against him in his personal and not in his official capacity, the bond of such an officer holding him only for default towards the Government."

Mr. Davis, Asst. Sec. of State, to Mr. Marvin, Mar. 5, 1873. MSS. Dom. Let. See *infra*, § 123.

"Your dispatch No. 99, of the 27th ultimo, relative to the raising of the consular flag in Mexico, has been received. This is a matter subject to municipal law, unless a privilege in respect to it should have been granted by treaty. We have no other privilege than that of equality with other nations, which will always be insisted on. It appears, however, that the authorities at the city of Mexico have overlooked a strict observance of the law by allowing consuls to display their flags on holidays of their respective nations. This, it seems to me, is as much as may be needed. If, however, they should at any time think proper to withdraw this indulgence, it is clear that we cannot insist upon its continuance as a matter of right."

Mr. Fish, Sec. of State, to Mr. Foster, Feb. 16, 1874. MSS. Inst., Mex.; For. Rel., 1874.

As a consul by international law enjoys no privilege which puts him upon a distinctive footing in regard to his private debts, his creditors cannot expect any peculiar process for their recovery.

Mr. Fish, Sec. of State, to Mr. Schlozer, Dec. 11, 1874. MSS. Notes, Germ.

"The power to take the acknowledgment of deeds and other instruments by consuls of the United States is a power conferred upon them by State legislation, and is wholly outside of their functions as consuls or officers of the General Government.

"The recording acts of the several States are understood to differ as to their requirements and forms of certificates. It would be assuming a responsibility which might be criticised, and which might lead to mistakes resulting in serious consequences, were this Department to undertake to instruct its officers in the discharge of powers which it does not object to their performance for the convenience of the public, but which are imposed or conferred upon them by the legislation of several of the States, each one prescribing at its pleasure its own forms and requirements of proof or identification. This Department does not profess to be informed as to the various requirements, whether by statute or possibly resulting from judicial decisions in the several States.

"It is therefore deemed most advisable to leave the execution of the power conferred by State legislation on persons holding diplomatic or consular functions under the General Government to the special instructions which may be given by them who desire to avail of their services."

Mr. Fish, Sec. of State, to Mr. Weeks, Jan. 21, 1875. MSS. Dom. Let.

"In the case of American citizens dying abroad it is made by law the duty of the United States consul within whose jurisdiction such death occurs to take charge of the effects of the deceased, cause an inventory of such effects to be taken, and dispose of any that may be deemed perishable by sale at public auction, and the proceeds of which, together with all other property and moneys of the deceased, he is to hold subject to the demand of the legal representatives of the deceased.

In case such representatives do not appear and demand the estate within a year, the consul is required to transmit the effects to the Treasury Department, there to await final distribution to the parties entitled to receive them.

"The Department possesses no discretionary power to dispense with these requirements of the statute, and it will, therefore, be necessary for some person to administer on the estate. Upon receiving a copy of such letters of administration, duly authenticated, the Department will give the necessary instructions to the consul at Matanzas to forward the effects of the late Mr. Chadwick directly to the address of his legal representatives."

Mr. Cadwalader, Acting Sec. of State, to Mr. Chadwick, Aug. 19, 1875. MSS. Dom. Let.

Official communications to consuls from other Departments of Government must be sent through the Secretary of State.

Mr. Fish, Sec. of State, to Mr. Boutwell, Jan. 21, 1876. MSS. Dom. Let.

"When a citizen of the United States, not a seaman, dies abroad without leaving a will, it is made the duty of a consul to take charge of any property he may leave in the consular district, and, after paying the debts of the deceased contracted there, to send the proceeds of the property at the expiration of a year to the Treasury of the United States, there to be held in trust for the legal representative. In case, however, a legal representative shall appear and demand the effects, the consul is required to deliver the property to him, after deducting the lawful fees. The statute on this subject may be found in section 1709 of the Revised Statutes of the United States."

Mr. Cadwalader, Asst. Sec. of State, to Mrs. Hopkins, Mar. 27, 1876. MSS. Dom. Let.

"Your dispatch, No. 112, of the 28th January last, has been received. It relates to the authority of the consul of the United States at Iquique to grant clearances to American vessels. Your letter to him upon the subject is in general approved. No consul, pursuant to our law or regulations, has the right to grant a clearance to any American vessel, even if his post is at a port conquered and possessed by the enemy of the country from whose Government he may have received his exequatur. It is the exclusive province of the belligerent authority for the time being—civil, military, or naval—to grant such clearances, and the consul, as is required in time of peace, should not deliver the vessel's papers until the clearance shall have been presented to him by the master. The consul's course is not to be governed or influenced by the components of the cargo of the vessel. If these, according to the existing authority, may lawfully be exported, the consul cannot properly gainsay that opinion."

Mr. Evarts, Sec. of State, to Mr. Christiancy, Mar. 2, 1880. MSS. Inst., Peru; included in documents accompanying President's message, Jan. 26, 1882.

The right of consular agents of Austria to hoist their national flag in places where their sovereign has no legation is established by the fourth article of the consular convention of July, 1870, between Austria and the United States, and this right cannot be impaired by any municipal ordinance prohibiting the exhibition of flags.

Mr. Frelinghuysen, Sec. of State, to Gov. Pattison, Aug. 27, 1884. MSS. Dom. Let.

It is not usual to allow to consuls the right of free entry for goods sent to them for their personal use; though in some countries this privilege is granted as a matter of courtesy.

See Mr. Bayard, Sec. of State, to Mr. Cox, Nov. 6, 1885. MSS. Inst., Turkey.

In Canada this privilege is granted to consuls-general.

As to diplomatic exemptions in this respect, see *supra*, § 93*a*.

The status of consuls as to marriages in foreign lands is considered in future sections.

Infra, §§ 262 *ff*.

It is not a consular function to authenticate the laws of a foreign state, and the certificate of a consul to that effect is not evidence.

Church *v.* Hubbart, 2 Cranch, 187.

While consuls, when there is no other representation, and when duly recognized, are competent parties to assert or defend the rights of property of their fellow-citizens or subjects in a court of admiralty without special procuration they cannot receive actual restitution of the property in controversy without a special authority. But a vice-consul, duly recognized by our Government, is a competent party to assert or defend the rights of property of the individuals of his nation, in any court having jurisdiction of causes affected by the application of international law; in this case a court of admiralty.

The Bello Corrunes, 6 Wheat., 152.

A consul cannot, by virtue of his office merely, interpose in a case of prize, and make claim for the restoration of captured property on the ground that the capture was made in neutral waters.

The Lilla, 2 Sprague, 177.

But in other cases the consul of a nation may claim on behalf of its subjects, in the absence of any authorized agent.

The London Packet, 1 Mason, 14.

A consul, in an enemy's country, has no authority by virtue of his office to grant a license or permit which will have the effect of exempting a vessel of the enemy from capture and confiscation.

Rogers *v.* The Amado, 1 Newberry, Adm., 400.

Unless by statute or treaty a foreign consul can exercise no municipal jurisdiction in the United States.

Aubrey, *in re.*, 26 Fed. Rep., 848.

In a suit brought against a consul-general of France, for transactions of a public nature, in which he acted as the commercial agent of his country, the President has no constitutional right to interfere, but must leave the matter to the tribunals of justice.

1 Op., 77, Lee, 1797.

In the instructions of a consul of the United States to Tunis, there occurred the following: "On your way to Tunis (perhaps at Malaga or Marseilles) you may probably devise means for the liberation of our unfortunate captives at Algiers. * * * Should you find a suitable channel, therefore, through which you can negotiate their immediate release, you are authorized to go as far as three thousand dollars a man; but a less sum may probably effect the object. * * * If success should attend your efforts you will draw upon this Department for the necessary funds for paying their ransoms, and providing for their comfortable return to their country and friends." The consul employed an agent at Cadiz for a certain hire and a promise of additional pay in case of success, to endeavor to effect the release of the captives, and then drew bills on the Department of State, in favor of a merchant at Gibraltar, for the compensation stipulated to be paid, etc.: It was advised that the employment of an agent was justified under the power. Objection, however, was made to the manner of the employment, as being inconsistent with the true meaning of the instructions; and, after a consideration of all the proceedings, which were much complicated by several matters somewhat foreign to the main business, it was advised that an application to Congress would be necessary.

1 Op., 196, Rush, 1816.

The rights and privileges of consuls rest on the general law of nations and on treaty.

1 Op., 378, Berrien, 1830.

Consuls cannot intervene as of right in the administration of a decedent's estate, except by way of surveillance.

8 Op., 98, Cushing, 1856.

The United States are not bound by the treaty with Peru to pay a consul of that country the value of property belonging to a deceased Peruvian, which the consul was entitled to administer, but which has been unjustly detained and administered by a local public administrator. The consul has a remedy in the courts.

9 Op., 383, Black, 1859.

The certification of the official character of a foreign notary is not such a notarial act as a consul of the United States is required to perform.

12 Op., 1, Stanbery, 1866.

As to consular courts, see *infra*, § 125.

As to consular fees, see Schuyler's Am. Diplom., 76.

Under Article I, section 9, of the Constitution of the United States, "no person holding any office of profit or trust under them, shall, without the consent of the Congress, accept of any present, emolument, office, or title of any kind whatever from any king, prince, or foreign state." This applies to consuls and diplomatic agents.

See *supra*, § 100.

"In the early Middle Ages, and before the establishment of more or less permanent legations, consuls appear to have enjoyed the right of extraterritorality, and the privileges and immunities now accorded to diplomatic representatives. In non-Christian and semi-civilized countries these privileges have to a large degree been preserved to them, and they have the sanction both of treaty and usage. Upon the establishment of legations, however, the exemptions and immunities granted to consuls came to be regarded as a limitation of the territorial rights of the sovereign, and they have in the process of time been restricted to such as are necessarily incident to the consular office, or have been provided for by treaty, or are supported by long established custom, or the particular laws of the place. A consular officer in civilized countries now has, under public law, no acknowledged representative or diplomatic character as regards the country to which he is accredited. He has, however, a certain representative character as affecting the commercial interests of the country from which he receives his appointment; and there may be circumstances, as, for example, in the absence of a diplomatic representative, which, apart from usage, make it proper for him to address the local government upon subjects which relate to the duties and rights of his office, and which are usually dealt with through a legation.

"Although consuls have no right to claim the privileges and immunities of diplomatic representatives, they are under the special protection of international law, and are regarded as the officers both of the state which appoints them and the state which receives them. The extent of their authority is derived from their commission and their exequatur; and it is believed that the granting of the latter instrument, without express restrictions, confers upon the consul all rights and privileges necessary to the performance of the duties of the consular office; and, generally, a consul may claim for himself and his office not only such rights and privileges as have been conceded by treaty, but also such as have the sanction of custom and local law, and have been enjoyed by his predecessors or by consuls of other nations, unless a formal notice has been given that they will not be extended to him.

"A consul may place the arms of his Government over his doors. Permission to display the national flag is not a matter of right, though it is usually accorded, and it is often provided for by treaty. He may claim inviolability for the archives and official property of his office, and their exemption from seizure or examination. He is protected from the billeting of soldiers in the consular residence, and he may claim exemption from service on juries and in the militia, and from other public duties.

It is probable, however that all these privileges could not be claimed for subordinate officers, especially for those who are citizens or subjects of the foreign state. The jurisdiction allowed to consuls in civilized countries over disputes between their countrymen is voluntary and in the nature of arbitration, and it relates more especially to matters of trade and commerce. A consul is, however, under public law, subject to the payment of taxes and municipal imposts and duties on his property in the country or on his trade, and generally to the civil and criminal jurisdiction of the country in which he resides. It is probable, if he does not engage in business, and does not own real estate, that he would not be subject to arrest or incarceration except on a criminal charge, and in the case of a commission of a crime he may either be punished by the local laws or sent back to his own country. In the absence of a diplomatic representative, a consul doubtless has the right of access to the authorities of the state in all matters appertaining to his office.

"The privileges of a consul who engages in business in the country of his official residence are, under international law, more restricted, especially if he is a subject or citizen of the foreign state. If his exequatur has been granted without limitations, he may claim the privileges and exemptions that are necessary to the performance of the duties of the office; but in all that concerns his personal status or his status as a merchant, it is doubtful that he can claim any rights or privileges not conceded to other subjects or citizens of the state.

"In Mohammedan and semi-civilized countries the rights of extraterritoriality have been largely preserved, and have generally been confirmed by treaties to consular officers. To a great degree they enjoy the immunities of diplomatic representatives, besides certain prerogatives of jurisdiction, together with the right of worship, and, to some extent, the right of asylum.

"These immunities extend to an exemption from both the civil and criminal jurisdiction of the country to which they are sent, and protect their household and the effects covered by the consular residence. Their personal property is exempt from taxation, though it may be otherwise with real estate or movables not connected with the consulate. Generally they are exempt from all personal impositions that arise from the character or quality of a subject or citizen of the country.

"The consular jurisdiction in these countries is both civil and criminal, and has in most cases been provided for by the stipulations of treaties. The extent of its exercise, as well as the penalties and punishments to be enforced, depend generally upon the laws of his own country to the exclusion of the jurisdiction of all local tribunals.

"Consuls have no claim, under international law, to any foreign ceremonial, and no right of precedence except among themselves, and in their relation to the military and naval officers of their own country. This precedence, as to officers of the same grade in the consular body of the place, depends upon the date of the respective exequaturs.

"Consuls must bear in mind that in the following abstract it is impossible to do more than allude in a general way to the rights and privleges secured by treaties. The several consular treaties and conventions with other powers may be found in Appendix No. 1, and in each case the consul must look there for more detailed information. It is also possible that more extended rights may have been granted to consuls of other nations, and that the officers of the United States may be entitled to claim them under the clause known as 'the most favored

nation clause,' in a treaty with the United States. This right is secured by treaties with the Argentine Confederation, Austria-Hungary, Bolivia, Colombia, Costa Rica, the Dominican Republic, Denmark, Ecuador, France, Germany, Hawaiian Islands, Hayti, Honduras, Italy, Madagascar, Morocco, Mexico, Nicaragua, Netherlands (and colonies), Orange Free State, Paraguay, Persia, Peru, Portugal, Prussia, Russia, San Salvador, Spain, Swiss Confederation, and Tripoli. The Department must necessarily trust to the discretion of the consul on the one hand, not to permit his rights to be invaded without protest, nor, on the other hand, to claim what he cannot maintain. If the rights thus secured by treaty are in any case invaded or violated the consul will at once complain to the local authorities, to the Department, and to his immediate superior. These complaints should set forth in full all the facts showing the invasion or violation.

"Inviolability of the archives and papers of the consulate 'is secured by treaties with Austria-Hungary, Argentine Confederation, Bolivia, Belgium, Colombia, Denmark, Dominican Republic, Ecuador, France, Germany, Greece, Hayti, Mexico, the Netherlands (and colonies), Orange Free State, Peru, Portugal, Salvador, Sweden and Norway, Switzerland. Muscat, and New Grenada.'

"Inviolability of the consular office and dwelling 'is secured by treaties with Belgium, Bolivia, France, Germany (of consuls not citizens), Italy, Muscat, and Salvador;' but the dwelling cannot be used as an asylum. It is agreed with Colombia that the persons and dwellings of consuls are to be subject to the laws of the country, except as specially exempted by treaty. The consulates in Germany are not to be made asylums for the subjects of other powers."

U. S. Cons. Reg., 1881, §§ 75, *ff.*

"The right in such case (of infraction of treaties) to correspond with the local authorities is secured by conventions with Austria-Hungary, Belgium, Colombia, France, Germany, Italy, Netherlands (and colonies), and Salvador; and in case the local authorities fail to give redress, and there be no diplomatic representative, they may apply to the Government.

"The right to place the national arms and the name of the consulate on the offices is given by treaties with Austria-Hungary and the Netherlands (and colonies); on their offices or dwellings by treaty with Belgium and Germany; the right to place the national flag on their dwellings, except where there is a legation, by treaties with Austria-Hungary, Belgium, and Germany; the right to place the arms, name, and flag on their offices or dwellings by treaties with France and Salvador; and on their offices by treaty with Italy; and the right to place the name and flag on their dwellings by treaty with Colombia.

"The right to take depositions is secured by conventions with Austria-Hungary, Belgium, France, Germany, Italy, Netherlands, New Granada, and Salvador. Objection has been raised by the German Government to the taking of testimony by consular officers of the United States in Germany, except as provided for by Article IX of the treaty of 1871."

Ibid., § 90, *ff.*

In certain treaties it is provided that requisitions for surrender of fugitives may be made by consular officers in absence of diplomatic representatives.

Ibid., §§ 97.

The consular regulations of the United States, 1881, contain articles on the following additional topics:

Relations of consular officers to the diplomatic representatives of the United States.

Relations of consular officers to naval officers of the United States.

Formalities to be observed on arrival at post.

Correspondence of consular officers with the Department of State.

Passports and protection of citizens of the United States.

Reciprocal duties of consular officers and masters of American vessels, including the shipment of seamen.

American seamen; discharge of seamen.

Arrears of wages and extra wages.

Relief of seamen.

Transportation of seamen.

Desertion of seamen.

Disputes between masters, officers, and crews.

Wrecked and stranded vessels and surveys.

Duties of consular officers in respect to American or foreign built vessels transferred to citizens of the United States within their jurisdiction.

Duties as to American vessels engaged in the transportation of Chinese and other emigrants.

Miscellaneous duties in regard to seamen and vessels of the United States and immigration; manifests; the national board of health and bills of health; protests; mutiny and insubordination, and the transportation of persons charged with crimes against the United States; deportation of paupers and criminals to the United States; Mormon emigrants; emigration passenger law; miscellaneous duties.

Estates of citizens and seamen dying without the United States.

Miscellaneous instructions; marriages; extradition of fugitive criminals; taxes; recommendations for office; public speeches; correspondence with the press; permission to trade; official correspondence and bearing abroad; precedence of consular officers; new inventions, discoveries, &c.; information as to light-houses, buoys, shoals, &c.; importation of neat cattle and hides; abuse of Government pouches; verification of powers to transfer United States stock; letters uncalled for; letters detained at foreign ports; presents and testimonials from foreign powers; consular uniform; consular officers acting for foreign states.

Duties towards American citizens; register of American citizens; annual report of marriages; laws respecting majority, marriage, and letters rogatory; examination of title and other unofficial services; notarial acts.

X. *RIGHT TO GIVE ASYLUM AND PROTECTION.*

§ 122.

The immunities of consuls in this relation are discussed in connection with those of diplomatic agents, *supra*, § 104.

"Abuses which have heretofore occurred in granting protection from the local authorities in eastern countries, and especially in the Turkish dominions, to persons who, in the opinion of this Department, had no claim thereto, render it advisable that the legations and consulates in that quarter should, once in six months, report the number, names, and occupations of the persons to whom, during the six months preceding, such protection may have been given, or by whom it may have been claimed. Such report will in future be expected to be made at the beginning of every January and July. It is believed that sound policy

dictates the utmost scrutiny and caution in extending the protection of this Government to any persons abroad who may not be citizens of the United States. Should that policy be adopted and scrupulously adhered to, those to whom protection may really be due may expect it to be efficient. Such protections should in no event be issued to aliens who are not actually in discharge of official duty under the direction of the respective consuls, or employed in their domestic service. In no case should they be granted where they will operate to screen the holder from prosecution for offenses against the laws of the country, or where reasonable ground exists for objection by the Government. No instrument in the nature of a passport should be issued to persons thus protected; it will be sufficient to grant, when necessary, a consular certificate setting forth the relation and duties in connection with the consulate.

"Requests have occasionally been made upon the Government of the United States to permit its diplomatic and consular officers to extend their protection to citizens or subjects of a foreign Government who may desire it and who may be sojourning at places where there are no diplomatic or consular representatives of that Government. This Government has from time to time, upon the request of friendly powers, given to its diplomatic and consular officers authority to take upon themselves, with the consent of the Government within whose jurisdiction they reside, the function of representing those powers at places where the latter had no such officers. It has understood this authority to be restricted simply to the granting of the services and good offices of our representatives, with their own consent, to meet what has ordinarily been a fortuitous and temporary exigency of the friendly Government. When this function is accepted, which must be done only with the approval of the Department of State, the diplomatic or consular officer becomes the agent of the foreign Government as to the duties he may perform for its citizens or subjects; he becomes responsible to it for his discharge of those duties, and that Government is alone responsible for his acts in relation thereto. He does not, however, for this purpose become a diplomatic or consular officer of the foreign Government."

U. S. Cons. Reg., 1881, §§ 175, *ff.*

XI. *BUSINESS RELATIONS OF.*

§ 123.

An arbitrary refusal of the Spanish consul at New York to authenticate the signature of the Secretary of State, "an act appropriately belonging to the consular functions," on the ground that "he or his Government had conceived some displeasure towards the persons who have executed some of the papers accompanying the signature of the Secretary," is in contravention of international law and practice.

Mr. Marcy, Sec. of State, to Mr. Magallon, Jan. 19, 1854. MSS. Notes, Spain.

As to duties of consuls acting as administrators of citizens dying in foreign lands, see Mr. Marcy, Sec. of State, to Mr. Aspinwall, Aug. 21, 1855, cited *supra*, § 121; Mr. Cadwalader, Acting Sec. of State, to Mr. Chadwick, Aug. 19, 1875; Mr. Cadwalader to Mrs. Hopkins, Mar. 27, 1876, *ibid.*

For report as to consular officers engaged in business in violation of law, see House Ex. Doc. 90, 35th Cong., 2d sess.

The employment of merchants as consuls is sustained not only by policy and expediency, but by the practice of all maritime powers.

Mr. Seward, Sec. of State, to Mr. Burlingame, Feb. 4, 1863; MSS. Inst., China. Same to same, Mar. 3, 1863; *ibid.*

As to acknowledgment of papers before consuls, see Mr. Fish, Sec. of State, to Mr. Weeks, Jan. 21, 1875, cited *supra*, § 121.

That the consul's bond does not cover mismanagement by him in unofficial business relations, see Mr. Davis to Mr. Marvin, Mar. 5, 1873, cited *supra*, § 121.

"Under long-established regulations the services of the diplomatic or consular officers of the Government cannot be claimed by private persons in such matters as you refer to. No objection will be made by the Department should any consular officer of the United States be willing to lend his services to you in such a matter. Such services would be personal and not official, and he would be entitled as any other person employed to proper compensation, which matter of compensation, and as to any expenses, should be arranged when application is made to him."

Mr. Cadwalader, Asst. Sec. of State, to Mr. Davis, Mar. 11, 1875. MSS. Dom. Let.

Consular officers abroad, undertaking private business on behalf of citizens of the United States, do so, not as representatives of the Department of State, but as private agents of their employers, whom they are at liberty to serve in matters not conflicting with consular duty.

Mr. F. W. Seward, Asst. Sec. of State, to Mr. Schoenberger, Dec. 2, 1878; Mr. Evarts, Sec. of State, to Mr. Downey, July 12, 1879. MSS. Dom. Let.

"It is no part of the duty of diplomatic or consular officers to attend to the prosecution of private claims of American citizens in foreign countries, especially when the courts of justice are open to them."

Mr. Evarts, Sec. of State, to Mr. Yoder, May 21, 1880. MSS. Dom. Let.

"It is entirely a matter of their own volition, and not only is it proper that all expenses to which they may be put should be provided for, but this Department has moreover allowed them to charge a reasonable fee for their services." If payment of such expenses is refused, the Department will direct the attention of the delinquent parties to be called to such refusal.

Mr. Evarts, Sec. of State, to clerk of Peoria court, May 15, 1880. MSS. Dom. Let. See Mr. Hunter, Second Asst. Sec. of State, to Mr. Diller, Apr. 28, 1881; *ibid*; also App., Vol. III, § 123.

"United States consuls in foreign countries, and especially in the East (China and Japan), are allowed and instructed to act for citizens of the United States in regard to their private matters, and to give them advice as to the settlement of controversies between themselves or between them and the citizens or subjects of any other Government

residing in the country of the consul's official residence, when called upon to do so by such American citizens, and when a consular officer can do this without prejudice to the due discharge of his official duties. The paragraphs of the regulations to which you refer are simply intended to impress upon the consul more earnestly his obligations to his countrymen in this regard."

Mr. Davis, Asst. Sec. of State, to Mr. Weiller, Feb. 20, 1884. MSS. Dom. Let.

"I have received your No. 902, of the 18th ultimo, in the matter of the arrest of Mr. John Dalton, United States consul at Ciudad Bolivar, by order of the President of Venezula, and have to approve your request of Mr. Dalton to be immediately furnished with full particulars in the premises.

"My instruction No. 294, of the 7th instant, will have shown you the action thus far taken with Mr. Soteldo, the Venezuelan minister here, in regard to the case. You will have observed from that instruction the Department's intention to await details before formulating a specific complaint.

"Mr. Dalton belongs to a class of consuls authorized to transact business. If he does, he is for all purposes of such business subject to the same treatment as any other American resident engaged in trade in Venezuela. He is manifestly subject to no less favorable treatment, although he may have no specific personal exemptions or privileges by reason of his office. But if he, a consul, has been subjected to treatment to which no American citizen under the treaty can be, that is, to imprisonment in virtue of an executive order without trial or opportunity for legal defense, then the fact of his being known as the representative of a friendly power might be deemed to aggravate the injury committed.

"You should lose no time in sending hither copies of all documents, the petition, the order of arrest, the correspondence between yourself, the Venezuelan Government, and Mr. Dalton, and any other information bearing upon the case, in order that the Department may give to it a full and impartial consideration."

Mr. Frelinghuysen, Sec. of State, to Mr. Baker, May 12, 1884. MSS. Inst., Venez.

"In reply to the suggestion contained in yours of the 13th instant, that instructions be made to consuls regarding inquiries on the financial standing of foreign individuals and firms, I would say that such a matter does not come within the proper functions of the Department. While endeavoring to meet all demands made upon it in the interest of manufacturers and merchants of the United States, it could not undertake to give the information you ask for, nor could it impose such a task upon consuls without injury to the public service. To pass upon the solvency of a firm or an individual is, under any circumstances, a matter of great difficulty, involving many delicate considerations, which it is impossible for a consul, having so many other duties inci-

dent to his office, to duly weigh and so to arrive at a conclusion that will be just to the person making the inquiry as to the firm or individual in question."

Mr. Porter, Acting Sec. of State, to Messrs. Stearns & Co., Jan. 19, 1886. MSS. Dom. Let.

A consul, though a public agent, is clothed with authority only for commercial purposes. He has a right to interpose claims for the restitution of property belonging to subjects of his own country, but it is not competent for him, without the special authority of his Government, to interpose a claim on account of the violation of the territorial jurisdiction of his country.

The Anne, 3 Wheat., 435.

In the absence of specific powers bestowed by competent authority, a consul has no right to receive the proceeds of property libeled and transferred into the registry of the court.

The Bello Corrunes, 6 Wheat., 152.

A trading consul, in all that concerns his trade, is liable in the same way as a native merchant. The character of consul does not give any protection to that of merchant, when they are united in the same person.

Coppell *v.* Hall, 7 Wall., 542; *supra*, § 121.

"In Austria-Hungary, Belgium, Germany, Italy, and the Nertherlands (and colonies), the local authorities are required to inform consuls of the death of their countrymen, intestate, or without known heirs. In Germany, consuls have the right to appear for absent heirs or creditors until regularly authorized representatives appear. In Peru, Salvador, Tunis, Morocco, Muscat, Persia, and Tripoli, they may administer on the property of their deceased countrymen. In Colombia they may do so, except where legislation forbids it. In Costa Rica, Honduras, and Nicaragua, they may nominate curators to take charge of such property, as far as local laws permit. In Paraguay they may become temporary custodians of such property. In Germany they may take charge of the effects of deceased sailors."

U. S. Cons. Reg., 1881, § 97.

XII. *PORT JURISDICTION OF SEAMEN AND SHIPPING.*

§ 124.

As to subjection of merchant vessels to law of port, see *supra* § 35.

"The United States and France have, by their consular convention, given mutually to their consuls jurisdiction in certain cases especially enumerated. But that convention gives to neither the power of establishing complete courts of admiralty within the territory of the other, nor even of deciding the particular question of prize or no prize."

Mr. Jefferson, Sec. of State, to Mr. Morris, Aug. 16, 1793. MSS. Inst., Ministers; 4 Jefferson's Works, 31.

As to consular jurisdiction in Oriental ports, see *infra*, § 125; *supra*, §§ 35, 35*a*.

Foreign consuls cannot exercise admiralty jurisdiction in the United States, except by force of a treaty.

Glass *v.* The Sloop Betsey, 3 Dall., 6.

The right given to seamen by Revised Statutes, section 4567, to lay their complaints before the American consul in foreign ports, is one which a court of admiralty will carefully protect.

Morris *v.* Cornell, 1 Sprague, 62; *infra*, § 125.

Where a minor, having concealed himself, without the knowledge of his father, on board of a whaling-ship, and not being discovered until the vessel was at sea, being then left by the master in the care of the American consul at the first port at which he touched, it was held to be the duty of the consul to provide for and send him home to the United States.

Luscom *v.* Osgood, 1 Sprague, 82.

The advice of a consul, in a foreign port, gives to the master of a vessel no justification for an illegal act.

Wilson *v.* The Mary, Gilpin, 33.

The consul, where a seaman is entitled to the privileges of an American seaman, and is destitute, is the proper judge as to the ship on board of which he should be placed for his return to the United States.

Matthews *v.* Offley, 3 Sumner, 115.

A consul cannot detain seamen in prison as a punishment, after he has discharged them from their contract at the request of the master.

Jordan *v.* Williams, 1 Curtis, 69.

The action of a consul in discharging a seaman in a foreign port is not conclusive where a libel is filed for wages.

Campbell *v.* The Uncle Sam, McAllister, 77.

Notwithstanding the Revised Statutes, section 4576, and section 8 of act of 1840 (5 Stat., 395), requiring masters of American vessels to give bond for the return of all the crew, unless discharged in a foreign country with consent of a consul, these sections, construed with the aid of the other parts of these statutes, do not require a master to return to the United States foreign seamen shipped at their own home, for a particular cruise, ending where it began, and discharged there according to the terms of their contract, though without the consent of a consul. The consent of a consul could not be rightly withheld in such a case, and there is no law requiring it to be asked.

U. S. *v.* Parsons, 1 Lowell, 107.

Under sec. 20, act June 26, 1884, amending Rev. Stat., § 4576, a master may make a contract with seamen providing for their discharge abroad without being required to pay extra wages on such discharge.

Seamen left behind in a foreign country on account of inability, from sickness, to return in the vessel in which they went out, are within the provisions of the act of February 28, 1803, supplementary to the act concerning consuls, and for them the master should deposit with the consul three months' pay over wages, &c., as in other cases of voluntary discharge.

1 Op., 593, Wirt, 1823.

Under act of June 26, 1884, but one month's extra wages can be exacted in this or any other case.

Consular jurisdiction depends on the general law of nations, existing treaties between the two Governments affected by it, and upon the obligatory force and activity of the rule of reciprocity. French consular jurisdiction in an American port depends on the correct interpretation of the treaties existing between France and the United States, which limit it to the exercise of police over French vessels, and jurisdiction in civil matters in all disputes which may arise; and provide that such police shall be confined to the interior of the vessels, and shall not interfere with the police of our ports where the vessels shall be. They also provide that in cases of crimes and breaches of the peace the offenders shall be amenable to the judges of the country. The claim of the French envoy for the exercise of judicial power by the consul of his Government in the port of Savannah is not warranted by any existing treaties, nor by a rule of reciprocity which the Executive has power to permit to be exercised. "The principles of international law, as they are recognized in Europe, afford no warrant for the exercise of judicial power by consuls; and the rights and duties of these functionaries depend, both for their authority and extent, upon the treaties subsisting between the Governments respectively interchanging this species of commercial agents."

2 Op., 381, Berrien, 1830. See Mr. Van Buren to Mr. Roux de Rochelle, Jan. 27, 1831. MSS. Notes, For. Leg.

The powers and duties of American consuls as to seamen's wages are confined to vessels owned by citizens of the United States, and constituting a part of our mercantile marine by sailing under our flag.

2 Op., 448, Berrien, 1831.

Masters of American vessels entering foreign ports where there is an American consul, and remaining so long that, by the local regulations, they are required to enter and afterward to clear in regular form, are required to deposit their registers, &c., with such consul, irrespective of the purpose for which the port was entered.

5 Op., 161, Johnson, 1849.

In order that the master of a ship on her "arrival" in a foreign port shall be compellable to deposit the ship's papers with the consul, the arrival must be such an one as involves entry and clearance.

6 Op., 163, Cushing, 1853.

Consuls have no authority to order the sale of a ship in a foreign port, either on complaint of the crew or otherwise. If, on such sale, the consul retain the money for the payment of seamen's wages, the United States are not liable to the owners for the money thus illegally received by the consul.

6 Op., 617, Cushing, 1854.

Masters of American vessels are subject to prosecution in the name of the consul for omission to deposit with him the papers according to law, but not to indictment. (2 Stat., 203, § 2; Rev. Stat., § 4309.)

7 Op., 395, Cushing, 1855.

American consuls have no authority to require masters of American vessels to take on board, and convey to the United States for trial, persons accused of crime.

7 Op., 722, Cushing, 1856.

The authority of consuls of the United States in foreign countries, in cases of crime at sea or in port, is ministerial only, and not judicial.

8 Op., 380, Cushing, 1857.

The commander of an American vessel is required to deliver his register and other ship's papers to the consul at a foreign port only in cases where he is compelled to make an entry at the custom-house.

9 Op., 256, Black, 1858.

Under the 28th section of the act of August 18, 1856, consuls have the authority to enforce the payment of wages in certain cases and consular fees, but not a general power of deciding upon all manner of disputed claims and demands against United States vessels. By the act of 1803 the consul is made the party to bring suit for penalties incurred under it, but not the judge to decide it. He cannot demand the penalty, decree it to be due, and enforce its payment by detaining the ship's papers.

9 Op., 384, Black, 1859.

A consul of the United States in a foreign port has no power to retain the papers of vessels which he may suspect are destined for the slave trade.

9 Op., 426, Black, 1859.

The master of an American vessel sailing to or between ports in the British North American provinces is required, on arriving at any such port, to deposit his ship's papers with the American consul.

The act of 1861 (12 Stat., 315; Rev. Stat., § 4309) does not change or affect the duties of masters of American vessels running regularly by weekly or monthly trips or otherwise between foreign ports, as imposed by act of 1803 (2 Stat., 203; Rev. Stat., § 4309).

If an American vessel is obliged by the law or usage prevailing at a foreign port to effect an entry, and she does enter conformably to the

local law or usage, her coming to such foreign port amounts to an "arrival" within the meaning of section 2 of act of 1803, independently of any ulterior destination of the vessel or the time she may remain, or intend to remain, at such port, or the particular business she may transact there.

11 Op., 73, Bates, 1866.

The consul of the United States at Honolulu has the right and power, without interference from the local courts, to determine questions as between citizens of the United States, who comprise the crew of an American vessel, and are bound to fulfill the obligations imposed by the shipping articles.

11 Op., 508, Speed, 1866.

A consul of the United States has no authority to demand and receive from the master of a vessel the money and effects belonging to a deserter from the vessel.

14 Op., 520, Williams, 1875.

The right "to sit as judges and arbitrators in such differences as may arise between the captains and crews," given to consuls, vice-consuls, &c., by article 13 of the treaty with Sweden and Norway of 1827, is limited to cases of a civil nature, and does not extend to public offenses. By said article the right of interference is expressly given to the local authorities where the differences between the captains and crews are such as to "disturb the order or tranquillity of the country," which includes all acts against each other amounting to actual breaches of the public peace.

It seems that a more enlarged jurisdiction is conferred upon consuls in some other treaties, as *e. g.*, in the treaty with France of February 23, 1853; in that with the German Empire of December 11, 1871; in that with Italy of February 8, 1868.

15 Op., 178, Taft, 1876.

"Exclusive jurisdiction over such disputes (between masters, officers, and crews) in the vessels of the United States, including questions of wages, is conferred by treaties or conventions with Austria-Hungary, Belgium, Colombia, Denmark, Dominican Republic, France, Germany, Greece, Italy, the Netherlands (and the colonies), Portugal, Russia, Salvador, Sweden and Norway, and Tripoli."

U. S. Cons. Reg., 1881, § 93.

A right to reclaim deserters from the vessels of the United States is conferred by certain other treaties.

Ibid., § 94.

By other treaties the right to adjust damages suffered at sea is given.

Ibid., § 95.

"The act to enforce treaty provisions respecting disputes between masters and crews was approved June 11, 1864. (13 Stat. L., 121.) It is not to take effect as to the ships or vessels of any nation, unless the President shall have been satisfied that similar provisions have been made by the other contracting party for the execution of the treaty, and shall have issued his proclamation to that effect. On the 10th of February, 1870, proclamation was made under this act as to the treaties with France, Prussia, and the other states of the North German Union and Italy (9 Op., 96), and on the 11th of May, 1872, as to the treaty with Sweden and Norway. (13 Stat. L., 121.)

"This statute authorizes any court of record of the United States, or any judge thereof, or any commissioner appointed under the laws of the United States to take bail or affidavits, or for other judicial purposes whatsoever, to receive the application of the consular officer, to issue process against the person complained of, and if it shall appear, on his being returned before the magistrate, that he is not a citizen of the United States, and if a *prima facie* case shall be made out that the matter concerns only the internal order and discipline or the foreign vessel, and does not affect directly the laws of the United States or the rights and duties of any citizen, then the magistrate shall commit the seaman to prison to abide the lawful order or control of the master; provided the expenses of the proceedings shall be paid by the consular officer, and the seaman shall not be detained for more than two months after his arrest.

"The statute respecting the restoration of deserters was approved March 2, 1829, and was entitled 'An act to provide for the apprehension and delivery of deserters from certain foreign vessels in the ports of the United States.' (4 Stat. L., 359.) It provides 'that on application of a consul or vice-consul of any foreign Government, having a treaty with the United States stipulating for the restoration of seamen deserting, made in writing, stating that the person therein named has deserted from a vessel of any such Government while in any port of the United States; and on proof by the exhibition of the register of the vessel, ship's roll, or other official document, that the person named belonged at the time of desertion to the crew of said vessel, it shall be the duty of any court, judge, justice, or other magistrate having competent power, to issue warrants to cause the said person to be arrested for examination, and if, on examination, the facts stated are found to be true, the person arrested not being a citizen of the United States, shall be delivered up to the said consul or vice-consul to be sent back,' etc.

Mr. J. C. B. Davis, Notes, &c.

Some of the above provisions are modified by the act of June 26, 1884, to which attention is again called.

The act of June 26, 1884, provides as follows:

SEC. 5. That section forty-five hundred and eighty-two of the Revised Statutes be amended so as to read as follows:

"SEC. 4582. Whenever a vessel of the United States is sold in a foreign country, and her company discharged, it shall be the duty of the master to produce to the consular officer the certified list of his ship's company, and also the shipping articles, and to pay to said consular officer for every seaman so discharged one month's wages over and above the wages which may then be due to such seaman; but in case the master of the vessel so sold shall, with the assent of said seaman, provide him with adequate employment on board some other vessel bound to the port at which he was originally shipped, or to such other port as may be agreed upon by him, then no payment of extra wages shall be required."

SEC. 6. That section forty six hundred of the Revised Statutes be amended so as to read as follows:

"SEC. 4600. It shall be the duty of consular officers to reclaim deserters and discountenance insubordination by every means within their power, and where the local authorities can be usefully employed for that purpose, to lend their aid and use their exertions to that end in the most effectual manner. In all cases where deserters are apprehended the consular officer shall inquire into the facts; and if he is satisfied that the desertion was caused by unusual or cruel treatment, he shall discharge the seaman, and require the master of the vessel from which such seaman is discharged to pay one month's wages over and above the wages then due; and the officer discharging such seaman shall enter upon the crew-list and shipping articles the cause of discharge, and the particulars in which the cruelty or unusual treatment consisted, and the facts as to his discharge or re engagement, as the case may be, and subscribe his name thereto officially."

SEC. 7. That section forty-five hundred and eighty-one of the Revised Statutes be amended so as to read as follows:

"SEC. 4581. If any consular officer, when discharging any seaman, shall neglect to require the payment of and collect the arrears of wages and extra wages required to be paid in the case of the discharge of any seaman, he shall be accountable to the United States to the full amount thereof. If any seaman, after his discharge, shall have incurred any expense for board or other necessaries at the place of his discharge, before shipping again, or for transportation to the United States, such expense shall be paid out of the arrears of wages and extra wages received by the consular officer, which shall be retained for that purpose and the balance only paid over to such seamen."

"SEC. 8. That section forty-five hundred and eighty-four of the Revised Statutes be hereby repealed."

SEC. 9. That section forty-five hundred and seventy-eight of the Revised Statutes be amended so as to read as follows:

"SEC. 4578. All masters of vessels of the United States, and bound to some port of the same, are required to take such destitute seamen on board their vessels, at the request of consular officers, and to transport them to the port in the United States to which such vessel may be bound, on such terms, not exceeding ten dollars for each person for voyages of not more than thirty days, and not exceeding twenty dollars for each person for longer voyages, as may be agreed between the master and the consular officer; and said consular officer shall issue certificates for such transportation, which certificates shall be assignable for collection. If any such destitute seaman is so disabled or ill as to be unable to perform duty, the consular officer shall so certify in the certificate of transportation, and such additional compensation shall be paid as the First Comptroller of the Treasury shall deem proper. Every such master who refuses to receive and transport such seamen on the request or order of such consular officer shall be liable to the United States in a penalty of one hundred dollars for each seaman so refused. The certificate of any such consular officer, given under his hand and official seal, shall be presumptive evidence of such refusal in any court of law having jurisdiction for the recovery of the penalty. No master of any vessel shall, however, be obliged to take a greater number than one man to every one hundred tons burden of the vessel on any one voyage."

XIII. *JUDICIAL FUNCTIONS IN SEMI-CIVILIZED LANDS.*

§ 125.

The judicial functions of consuls and of diplomatic agents are primarily determined by statutes and treaties, which it does not fall within the range of the present work to reproduce. This digest is confined to the rulings of the executive and of the courts in this relation.

"Another series of treaties grants to the consuls of the United States in the territories of certain Oriental powers, exclusive jurisdiction over disputes between citizens of the United States, or over offenses committed by citizens of the United States, or both.

"The first statute to affirm and regulate this jurisdiction was approved on the 11th of August, 1848. (9 Stat. L., 276.) Attorney-General Cushing gave an exhaustive opinion on this statute (hereafter quoted). In 1860 a new statute was passed, which was amended in 1870. (12 Stat.

L., 72.) Under these various statutes the following is the present condition of the law and practice in this respect:

"The consuls and commercial agents of the United States at islands or in countries not inhabited by any civilized people, or recognized by any treaty of the United States, are invested with power to hear and determine cases in regard to civil rights where the debt or damage does not exceed $1,000 exclusive of costs; and also to issue warrants to arrest offenders, to arraign, try, and convict them, and to punish them to the extent of $100 fine or to imprisonment not to exceed sixty days.

"The provisions of the statute of 1860 apply directly to the consulates in China, Japan, and Siam. They apply in terms to Turkey (see section 21 of the act of 1860), so far as they relate to crimes and offenses, and as to civil cases so far as the laws of Turkey permit.

"The authenticity of the English version of the treaty of 1830 with Turkey, under which exterritorial rights had been claimed and allowed, has been recently questioned. The present attitude of the question is set forth in the note entitled 'Ottoman Porte.'

"The operation of the statute of 1860 is extended (§ 28) to Persia, to Tripoli, Tunis, Morocco, and Muscat (§ 29), to Egypt (14 Stat. L., 322) and all other countries with which treaties may hereafter be made (16 Stat. L., 183).

"The jurisdiction is to be exercised in conformity with, 1st, the laws of the United States; 2d, with the common law, including equity and admiralty; and, 3d, with decrees and regulations, having the force of law, made by the ministers of the United States in such country respectively, to supply defects and deficiencies in the laws of the United States, or the common law as above defined.

"This power of the ministers to make such laws and regulations is limited, by instructions from the Department of State, to acts necessary to organize and give efficiency to the courts created by the act.

"Mr. Fish, on the 26th of February, 1873, instructed the minister at Japan, on this subject thus: 'The authority of a minister, in an Oriental country, to make regulations having the force of law within the country to which he is accredited, is derived from the act of 1860, entitled "An act to carry into effect provisions of the treaties between the United States, China, Japan, Siam, Persia, and other countries, *giving certain judicial powers* to ministers and consuls, or other functionaries of the United States in those countries, and for other purposes."

"'The first twenty-eight sections (except the 21st) relate to the treaties referred to in the title. The remainder of the act refers to the "other purposes." Sections one, four, and five, therefore, relate exclusively to the subject of carrying into effect treaty provisions *conferring judicial powers* on ministers.

"'The first section provides that "to carry into full effect the provisions of the treaties, &c., * * * the ministers and the consuls of the United States duly appointed to reside in each of the said countries shall, in addition to other powers and duties imposed upon them, respectively, by the provisions of such treaty, respectively, *be invested with the judicial authority herein described.*"

"'The fourth section defines how those powers are to be exercised, namely, in conformity with the laws of the United States, "but in all cases where such laws are not adapted to the object" (*i. e.*, the exercise of such judicial powers), "or are deficient in the provisions *necessary to furnish suitable remedies*, the common law, including equity and admiralty, shall be extended in like manner over such citizens and others in

the said countries; and if defects still remain to be supplied, and neither the common law, including equity and admiralty, nor the statutes of the United States, *furnish appropriate and suitable remedies*, the ministers in the said counties, respectively, shall by decrees and regulations, which shall have the force of law, supply such defect and deficiencies."

"'The fifth section provides that "*in order to organize and to carry into effect the system of jurisprudence* demanded by such treaties respectively, the said ministers, with the advice of the several consuls in each of the said countries respectively, or so many of them as can be conveniently assembled, shall prescribe the forms of all processes which shall be issued by any of said consuls, and * * * make all such decrees and regulations from time to time as the exigencies may demand; and all *such* regulations, decrees, and orders shall be plainly drawn up in writing, and submitted as above provided for the advice of the consuls, or as many of them as can be consulted without prejudicial delay or inconvenience, who shall each signify his assent or dissent in writing, with his name subscribed thereto; and, after taking such advice and considering the same, the minister in the said countries, respectively, may, nevertheless, by causing the decree, order, or regulation to be published, with his signature thereto, and the opinions of his advisors inscribed thereon, make it to become binding and obligatory until annulled or modified by Congress." * * *

"'It is the opinion of the Department that this statute confers upon the minister in Japan no authority to make a regulation requiring citizens of the United States to register their names, and no power to enforce such a regulation judicially.

"'The authority conferred by the act is defined in the first section to be a *judicial* authority. By the fourth section the minister is required to execute that power in *conformity with the laws of the United States*, with authority to vary from those laws in two cases only: (1) Where those laws are not adapted to the exercise of the judicial authority conferred by section one; (2) Where they are deficient in the provisions to furnish suitable remedies. In each of these contingencies the minister has authority to make regulations in order "*to furnish suitable and appropriate remedies*," and for no other purpose whatever.

"'The fifth section is still more explicit on this point. Every power named in this section is recited to be conferred upon the minister "*in order to organize and carry into effect a system of jurisprudence.*"'

"The power of originating civil and criminal proceedings is vested by the statute in consular officers exclusively.

"They can also, sitting alone, determine all criminal cases where the fine imposed does not exceed five hundred dollars, or the term of imprisonment does not exceed ninety days; and may impose fines to the extent of fifty dollars, or imprisonment, not exceeding twenty-four hours, for contempt committed in the presence of the court, or for failure to obey a summons.

"They may also, when of opinion that legal questions may arise in which assistance may be useful, or that a severer punishment is required, summon associates, not more than four in number, taken by lot from a list to be previously approved by the minister, to sit with them on the trial, each of whom is to enter upon the record his judgment and opinion, and to sign the same; but the consul himself gives the judgment in the case, whether it accords with that of his associates or not.

"In trials for capital offenses there must be four associates, who must all agree with the consul, in order to convict, and the opinion must be approved by the minister before there can be a conviction.

"They have exclusive jurisdiction in civil proceedings where the damage demanded does not exceed five hundred dollars.

"When the amount demanded exceeds five hundred dollars, or when the consul thinks the case involves legal perplexities, and that assistance will be useful, he may summon to his aid not less than two nor more than three associates, to be selected from a list of persons nominated by the consul, for the purposes of the act, to the minister, and approved by him. They shall hear the case with him. The consul, however, is to give the judgment. If they agree with him, the judgment is final. If they, or any of them, disagree, the opinions of all are to be noted on the record and subscribed by them, and the judgment of the consul is then subject to appeal.

"Such a consular court cannot, in a suit by a person not a citizen of the United States, entertain a set-off further than to the extent of the claim asserted by the plaintiff, and cannot render a judgment against a person of foreign birth not a citizen of the United States. (11 Op., 474, Speed, cited *infra*.)

"An appeal may be taken in criminal cases from a decision of a consul acting alone, where the fine exceeds one hundred dollars, or the time of imprisonment for a misdemeanor exceeds ninety days.

"If associates sit with the consul in criminal proceedings (except capital), an appeal can be taken to the minister only in case of disagreement between him and one of his associates.

"In civil proceedings, in cases arising before the 1st day of July, 1870, an appeal can only be taken to the minister from cases in which associates sit with the consul, and in which there is not an agreement of opinion.

"In cases arising after the 1st day of July, 1870, an appeal may be taken to the minister from final judgment in the consular courts of China and Japan, where the matter in dispute exceeds five hundred dollars, but does not exceed two thousand five hundred dollars, exclusive of costs; and where the matter exceeds two thousand five hundred dollars, exclusive of costs, the appeal may be taken to the circuit court for the district of California.

"There are also regulations for appeals from the judgments of ministers to the circuit court of California.

"In Tunis, Morocco, and Tripoli, citizens of the United States committing murder or homicide upon a subject of those powers are to be tried by a mixed court, at which the consul is to 'assist.'

"The undisputed portion of the fourth article of the treaty of 1830 with the Ottoman Porte provides for the supervision of the American dragoman in the hearing of all litigations and disputes arising between the subjects of the Sublime Porte and citizens of the United States.

"It is not in dispute that the usages observed towards other Franks are to be observed toward citizens of the United States. These usages are believed to be the following:

"1. Turkish tribunals for questions between subjects of the Porte and foreign Christians.

"2. Consular courts for the business of each nation of foreign Christians.

"3. Trial of questions between foreign Christians of different nations in the consular court of the defendant's nation.

"4. Mixed tribunals of Turkish magistrates and foreign Christians at length substituted in part for cases between Turks and foreign Christians.

"5. Finally, for causes between foreign Christians, the substitution at length of mixed tribunals in place of the separate courts; this arrangement introduced at first by the legations of Austria, Great Britain, France, and Russia, and then tacitly acceded to by the legations of other foreign Christians.

"A provision in a treaty that a consul may ex-officio administer upon the estates of citizens of his nationality dying within his jurisdiction without legal heirs there, gives no right of reclamation against the United States for the value of the property of such a decedent improperly administered on by a State court, unless the consul first exhausts his remedies at law to prevent such State administration."

Mr. J. C. B. Davis. Notes, &c.

"I have to acknowledge the receipt of your dispatch of the 21st of June last, No. 58.

"The seventh article of the treaty with Japan, of 1858 (12 Stat., 1507), provides that certain persons convicted of felony, or twice convicted of misdemeanor, shall lose their right of permanent residence in Japan, and the Japanese authorities may require them to leave the country. Our consular authorities are to determine a reasonable time for the convict to settle his affairs, not exceeding one year. When that time shall expire, the convict becomes an outlaw, not entitled to any of the benefits of our treaties with Japan. Such a state of circumstances, however, if known, will be apt to induce the convict to avoid the position in which the treaty between the two countries will have placed him. If he persists in remaining, this Government cannot protect him against the consequences of his own determination.

"Consular courts have arrogated to themselves the power of banishing American convicts to the United States, and, as in the instance reported by you, to China. This is a form of punishment not known to our law, and if it has been overlooked, it has not been approved by this Department.

"The principles upon which we resist the deportation of foreign criminals to the United States, and which may well estop us from sending American criminals to China, do not appear to afford any reason why we should not bring home, for punishment, our citizens who have been guilty of crime upon the high seas, or in countries where we reserve the jurisdiction for trial and punishment to our own tribunals."

Mr. Fish, Sec. of State, to Mr. De Long, Sept. 10, 1870. MSS. Inst., Japan. For. Rel., 1870.

"I acknowledge the receipt of your dispatches (No. 87) of September 19, 1870, and (No. 96) of October 19, 1870; the first inclosing the original manuscript, and the second a printed copy of regulations for the consular courts in Japan, made and promulgated by you with the assent of our consular officers in that Kingdom.

"I regard the second section of the act of July 1, 1870 (New Consular Regulations, page 273, No. 922), as intended to provide for the estab

lishment of regulations in countries where we have no diplomatic representatives, and shall therefore submit the regulations transmitted by you to Congress for revision, without assuming for myself the power or the duty of disapproving or amending them. I, however, think it my duty to call the attention of Congress to certain of the regulations which may be thought to transcend the authority delegated to a minister, or that of the Secretary of State, in countries to which no minister is accredited.

"The power conferred upon a minister by sections 5 and 6 of the act of June 22, 1860 (New Consular Regulations, Nos. 839 and 840), has been understood by this Department as confined to the course of procedure in pursuing judicial remedies, and as not extending to the creation of new rights or duties in citizens of the United States, or to the modification of personal rights and obligations under the existing law. You have referred to the embarrassment arising from the absence of a common law of the United States, in their Federal character, and the diversities between the common law, as adopted and interpreted by the several States and as modified by their separate legislation.

"This difficulty is a necessary consequence of our complex system of government. If it can be obviated at all, it is perhaps only by the operation on the part of Congress of a jurisdiction over citizens of the United States residing in unchristian or imperfectly civilized lands, equivalent to the plenary powers with which it is invested in the District of Columbia and in the other Territories. This Department has been under the impression that it would be most discreet to allow the anomalous jurisdiction of our consular courts in such countries to find its limits and definition from the practical exigencies of administration and the acquiescence of the Governments within whose territory the jurisdiction is exercised.

"A report made to Congress by my predecessor, Mr. Seward (a copy of which is inclosed), shows that it has been the habit of this Department to regard the judicial power of our consular officers in Japan as resting upon the assent of the Government of that Kingdom, whether expressed by formal convention or by tacit acquiescence in the notorious practice of the consular courts. In other words, they were esteemed somewhat in the same light as they would have been if they were constituted by the Mikado with American citizens as judges, and with all the authority with which a Japanese tribunal is invested in respect to the native subjects of Japan, to the extent that our Government will admit a jurisdiction understood to be extremely arbitrary. They were, so to speak, the agents of a despotism, only restrained by such safeguards as our own Government may interpose for the protection of citizens who come within its sway.

"Between this view and that which would regard our consular courts as possessing only that authority which has been conferred upon them in express terms by Congress there is a wide margin. Congress, in-

formed by Mr. Seward's report before mentioned of the general views which had obtained in this Department, has not indicated its dissent or concurrence, except by silence. It is possible that some future appeal under the fifth and sixth sections of the act of July 1, 1870, may lead to a judicial determination of the extent of consular jurisdiction. The communication of your regulations may have the effect of bringing the whole subject to the consideration of Congress, and produce a clear expression of its views.

"Nearly all the regulations transmitted by you are regarded as clearly within your power to make, and to carry into effect, until Congress shall indicate its pleasure to the contrary. They relate, with few exceptions, to the course of procedure in the consular courts, and so far as they have this character will be submitted to the judgment of Congress without remarks in regard to the expediency of their adoption or their amendment. Among the exceptions are—

"1. The first regulation requiring the registry and enrollment of citizens of the United States under a pecuniary penalty and the forfeiture of right to the protection of the agents of this Government in Japan.

"This may be a very desirable regulation, but it will be submitted to the judgment of Congress whether it be not of a purely legislative character, divesting private rights in a manner not authorized by Congress, nor, so far as known, by the Government of Japan.

"2. The provisions of the thirteenth and thirty-second regulations authorize judicial proceedings, by summons and by attachment of property against citizens not residing in Japan. It is not even required in terms that they shall at any time have been residents of the Empire. While it may be that the jurisdiction of our consular courts under treaties and usage extends to the property of Americans in Japan, although they may have abandoned their residence in the Kingdom or have never resided therein, the question admits of such doubt as to call for the determination of Congress.

"3. Regulation No. 229 establishes the grounds upon which divorce from the bond of matrimony may be granted. There is no general law of divorce enacted by Congress for the Territories under its exclusive jurisdiction, and the State laws on this subject, as you are aware, have important diversities. The rule which you prescribe for the dissolution of marriage may be very different from that prescribed by the law of the State in which the parties contracted, and which may be supposed to have been in the minds of both of them, as governing their marital relations. The effect of such divorces may come into controversy upon questions of legitimacy of inheritance, even of bigamy, in every State of our Union. The children of a marriage subsequent to the divorce of the parents in Japan may be allowed to inherit in one State, and may be bastardized in another, unless the law of divorce for citizens of the United States in Japan, if such divorces are permitted at all, shall be fixed by an authority to which all will defer.

"4. Regulation No. 331 declares the cases distributed under six heads, in which steamers and other vessels shall be subject to liens, in consequence of contracts and torts connected with their outfit and navigation. So far as these are merely affirmatory of general principles of maritime law they are unobjectionable, but a further clause of the regulation limits the continuance of such lien to one year. This, even if it be construed as merely a statute of limitation for actions to be brought in our courts in Japan, is positive legislation, and of a novel character.

"5. The sixth regulation in regard to criminal proceedings, allowing the testimony of an absent person to be taken and used in criminal cases, not merely as against the Government, but against the accused, is in apparent derogation of the fourth amendment of the Constitution, which, if that instrument operates upon our citizens in Japan, secures to the accused the right to be confronted with the witnesses against him. In any event, it is not in accordance with the common law of England or of any of the United States, but is to be established by legislative authority. The same is true, except that there is no objection growing out of the Constitution, in regard to the thirteenth regulation, allowing a person charged with crime to testify in his own behalf.

"6. The twenty-second regulation of criminal proceedings implies that murder is distinguishable into three or more degrees. The twenty-third subjects to perpetual banishment a person guilty of felony, and the twenty-fourth refers to the rules of the common law for the definition of felonies and misdemeanors. Where are we to look for the exposition of the common law? To the courts of Massachusetts, or to those of Georgia, or to those of England?"

Same to same, Dec. 20, 1870; *Ibid.* Inclosure, Senate Ex. Doc. 20, 40th Cong., 3d sess.

"The Ottoman Government and that of Egypt have latterly shown a disposition to relieve foreign consuls of the judicial powers which heretofore they have exercised in the Turkish dominions, by organizing other tribunals. As Congress, however, has by law provided for the discharge of judicial functions by consuls of the United States in that quarter under the treaty of 1830, I have not felt at liberty formally to accept the proposed change without the assent of Congress, whose decision upon the subject, at as early a period as may be convenient, is earnestly requested."

President Grant, Fifth Annual Message, 1873.

A United States consul in China has no jurisdiction to try a criminal charge against any one except a citizen of the United States.

Mr. Fish, Sec. of State, to Mr. Low, Jan. 8, 1873. MSS. Inst., China.

"When, however, such an offender, being a member of the crew of an American vessel, is a subject or citizen of a country having no treaty engagements on this question with China or Japan, or where the consul of the nation to which such person may belong shall decline to assume

jurisdiction over him for the offense charged against him, it is the opinion of this Department that the consular officers of the United States may properly assume jurisdiction in the case.

"In reference to offenses committed on shore in China and Japan by persons enlisted or serving on board national vessels of war, jurisdiction in such cases, in the opinion of this Government, should be remitted to the consuls of the country under whose flag the offender is serving, on the ground that all persons who have taken service under a power are, for the time being, under the jurisdiction of that power exclusively and amenable to its tribunals.

"Information has reached this Department that the Government of Great Britain, entertaining these views, has lately issued instructions to its authorities in China, Japan, and Siam, to abstain from interference with British subjects serving on United States or other foreign men-of-war, upon the principle above adverted to, and you are instructed in like manner to abstain from interference with citizens of the United States serving on board British or other foreign vessels of war who may be charged with the commission of offenses on shore."

Mr. Cadwalader, Acting Sec. of State, to Mr. Avery, Nov. 2, 1875. MSS. Inst., China.

"It is the opinion of the Department that the consular courts are creatures of the statute creating them. Their jurisdiction is limited strictly to the subjects, matters, and purposes specified in the statutes, and no person or officer, except those expressly named or fairly included within the terms of the law, can exercise the powers or functions of a judge of such court. The act of the 22d of June, 1860, to carry into effect the treaty between the United States and China says: 'The word consul shall be understood to mean any person invested by the United States with and exercising the functions of consul-general, vice-consul-general, consul, or vice-consul in any of the countries herein named.' These are the only consular officers invested with, and who, under the law prior to the revision, could exercise, judicial functions. In transferring this section to the Revised Statutes the words 'vice-consul-general' were omitted (section 4130). It has been held by the Department that this omission excludes that officer from the right to exercise judicial functions, and consuls-general in China, Japan, and Turkey have been so instructed."

Mr. Fish, Sec. of State, to Mr. Seward, Jan. 19, 1876. MSS. Inst., China.

Although not required by our treaty with China, the Department, in 1877, gave a general expression of approval to "the recommendation of the presence of consular officers of their own nationality in the criminal trial of Chinese where the sufferer is a foreigner, and of allowing a Chinese officer to be present at the trial of foreigners where a Chinese is the sufferer."

Mr. Fish, Sec. of State, to Mr. Seward, Feb. 14, 1877. MSS. Inst., China.

In the practice of the mixed courts sitting in China the application of torture to force witnesses to testify cannot be permitted, although sanctioned by Chinese law, but, on the other hand, such proper discipline as may be requisite in the way of imprisonment or otherwise may be applied.

Mr. Hay, Asst. Sec. of State, to Mr. Angell, Aug. 16, 1880. MSS. Inst., China.

The question here involved is one of great difficulty. In England and in the United States a witness who refuses to testify is imprisoned until this refusal is withdrawn, but in China our consular courts have no means of enforcing an order of indefinite imprisonment, and to hand the contumacious witness over to a Chinese prison would be to hand him over to torture, of which Chinese prison discipline largely consists. Yet, without the power of compelling the giving of testimony, no court of justice can be efficiently conducted. It must be conceded that a consul cannot direct a witness to be tortured, either by his own direct order or through the agency of Chinese officials. Yet, if he does not exercise such power, whether a witness shall testify at all, or what limit is to be imposed on his testimony, will have to be determined by himself.

The only criminal cases in Japan in which under our statutes there is an appeal from the consular courts to the minister are those in which the punishment is capital.

Mr. Evarts, Sec. of State, to Mr. Bingham, Oct. 7, 1880. MSS. Inst., Japan.

The punishment in non-capital cases "should conform to that prescribed by the laws of the United States for similar offenses."

Ibid.

"I have the honor to acknowledge the receipt of the note which, by direction of Earl Granville, you addressed to this Department on the 20th of August last, in relation to the modification and continuance of the tribunals of the reform in Egypt, after the expiration of the existing quinquennial period on the 1st of February next.

"The circular of the Egyptian minister of foreign affairs, of May 30, 1880, to which his lordship refers, was received by this Government in due course, and has had the attention which is due on the part of the United States, as one of the parties to the original scheme of constituting the tribunals of the reform which it is now proposed to change by means of a deliberative commission to be appointed *ad hoc*. The result of a detailed examination has led this Government to conclusions which are, in the main, identical with those of Her Majesty's Government, as communicated to you by Earl Granville. It accepts, in principle, the proposal of the Khedival Government, that an international commission of delegates from the several powers which joined in the institution of the existing tribunals, should, with as little delay as possible, consider and report to the powers upon such modifications as may appear to be expedient or necessary in the constitution of the tribunals of the reform, and in their procedure and their administration of the law, as well as in the law itself as framed by them, so long as such modification shall

place the judicial administration of Egypt on a basis no less favorable than the present one for securing to citizens of the United States in His Highness's dominions the same impartial justice they enjoyed under the exercise of judicial functions by the diplomatic and consular officers of the United States in those dominions previous to the institution of the reform tribunals.

"This Government will, therefore, appoint, at as early a day as possible, two delegates, one of whom shall be principal and the other associate, with the same functions as like adjunct delegates of the other powers, to represent the United States in the proposed commission.

"This Government shares the views of that of Her Britannic Majesty with respect to the future admission, if it be found expedient, of delegates or other powers than those which united in establishing the existing judicial system of Egypt. It likewise concurs in the opinion that the formation of a subcommittee is a matter properly within the discretion of the commission itself.

"The question of the extension of the present quinquennial period to cover the time which may possibly elapse before the modifications to be adopted can become operative, being, so far as the United States are concerned, one for the discretion of the executives, this Government is prepared in this matter also to accede to the proposal of the Government of His Highness the Khedive. The question of the appointment of the present foreign judges to like places in the reorganized tribunals, being properly one for the consideration of each of the appointing powers, it is conceived that no rigid rule should be adopted by the commission with respect to such appointments. It may thus be expedient to provide that the continuance of the present judges through whatever extended term may be requisite before the proposed modifications can take effect, shall not necessarily imply renewal of their existing contracts with the Egyptian Government for a fixed quinquennial or other period, but shall be simply for the time needful to effect the contemplated changes."

Mr. Hay, Acting Sec. of State, to Mr. Drummond, Oct. 26, 1880. MSS. Notes, Gr. Brit.; For. Rel., 1880.

"When commercial relations and general intercourse were opened to foreign nations and extended by the liberality of the Chinese and Japanese Empires, it became evident that the seamen and citizens of these foreign powers could not safely be subjected to the local authorities. The arbitrary jurisdiction of their courts, more executive than judicial, the custom of torturing witnesses to compel their testimony, the extreme and cruel punishments inflicted even for comparatively slight offenses, the difficulties of language and the utter incompatibility of habits of thought on all legal and moral questions, made it impossible to trust the persons, the property, and the lives of our own people to such a jurisdiction.

"This was recognized by the Governments of China and Japan, and they consented to transfer the necessary judicial authority which, in their own territory, would otherwise unquestionably have been exclusive to the consular officers of such foreign powers as were willing to negotiate treaties to that effect.

"By Article IV of the treaty of Simoda, 1857, and Article VI of the treaty of Yeddo, 1858, both negotiated by the same minister, it is provided that:

"'Americans committing offenses in Japan shall be tried by the American consul-general or consul, and shall be punished according to American laws,' and 'Americans committing offenses against Japanese shall be tried in American consular courts, and when guilty shall be punished according to American law,' thus providing for the trial of all offenses committed by Americans in Japan by the consular courts of the United States.

"The same principle, as I understand, is secured by treaty to the subjects of Her Britannic Majesty.

"Under these provisions no difference can arise. Under them, clearly, the test of jurisdiction is nationality. An offense committed anywhere in Japan, except on a foreign man-of-war or within the precincts of a foreign legation, which are extraterritorial, if committed by an English subject resident in Japan is justiciable before the British courts; if committed by an American citizen resident in Japan, is justiciable in the consular courts of the United States.

"But there is a class of people who are not residents of Japan in the ordinary acceptance of the term, and who are not protected by the extraterritorial character of the vessel on which they serve. They are the seamen of the mercantile marine, and they are specially recognized by Article IX of the treaty of 1858, which provides:

"'When requested by the American consul, the Japanese authorities will cause the arrest of all deserters and fugitives from justice, receive in jail all persons held as prisoners by the consul, and give to the consul such assistance as may be required to enable him to enforce the observance of the laws by the Americans who are on land, and to maintain order among the shipping.'

"And in view of this provision, the Government of the United States, which authorizes the enrollment in every American merchant ship of a certain number of seamen who are not citizens, has enacted in the act providing for the execution of this treaty, as follows:

"'Jurisdiction in both criminal and civil matters, shall, in all cases, be exercised and enforced in conformity with the laws of the United States, which are hereby, so far as is necessary to execute such treaties, respectively, and so far as they are suitable to carry the same into effect, extended *over all citizens of the United States* in those countries, *and over all others* to the extent that the terms of the treaties respectively, justify or require.' (Section 4836, Rev. Stat.)

"The position taken by the Government of the United States in this legislation, under the articles of the treaty, is, that a foreign seaman duly enrolled on an American merchant vessel, is subject to the laws and entitled to the protection of the United States to precisely the same extent that a native-born seaman would be, during the period of his service; that although not an American citizen, he is unquestionably an American seaman. * * *

"When a foreigner enters the mercantile marine of any nation and becomes one of the crew of a vessel having undoubtedly a national character, he assumes a temporary allegiance to the flag under which he serves, and in return for the protection afforded him becomes subject to the laws by which that nation, in the exercise of an unquestioned authority, governs its vessels and seamen. If, therefore, the Government of the United States has, by treaty stipulation with Japan, acquired the privilege of administering its own laws upon its own vessels and in relation to its own seamen in Japanese territory, then every American vessel and every seaman of its crew are subject to the jurisdiction by which such treaty has been transferred to the Government of the United States."

Mr. Blaine, Sec. of State, to Sir E. Thornton, June 3, 1881. MSS. Notes, Gr. Brit.

"The intimacy between our own country and Japan, the most advanced of the Eastern nations, continues to be cordial. I am advised that the Emperor contemplates the establishment of full constitutional government and that he has already summoned a parliamentary congress for the purpose of effecting the change. Such a remarkable step toward complete assimilation with the Western system cannot fail to bring Japan into closer and more beneficial relationship with ourselves as the chief Pacific power.

"A question has arisen in relation to the exercise in that country of the judicial functions conferred upon our ministers and consuls. The indictment, trial, and conviction in the consular court at Yokohama of John Ross, a merchant seaman on board an American vessel, have made it necessary for the Government to institute a careful examination into the nature and methods of this jurisdiction.

"It appeared that Ross was regularly shipped under the flag of the United States, but was by birth a British subject. My predecessor felt it his duty to maintain the position that, during his service as a regularly shipped seaman on board an American merchant vessel, Ross was subject to the laws of that service, and to the jurisdiction of the United States consular authorities."

President Arthur, First Annual Message, 1881.

A seaman duly enrolled in a merchant vessel of the United States, lying in the port of Yokohama, and who there was guilty of murder, is

within the jurisdiction of the United States consul at that port, and may be convicted of such crime, although he was at the time a British subject.

Mr. Blaine, Sec. of State, report to President, Dec. 19, 1881. MSS. Report Book. As to consular jurisdiction in such case, see *supra*, § 124; as to jurisdiction generally, see *supra*, §§ 35, 35*a*.

On December 19, 1881, President Arthur sent to the Senate a report of Mr. Blaine, Secretary of State, on "the present system of consular jurisdiction." Mr. Blaine, in this opinion, comments adversely on the constitutionality as well as policy of section 4083 *ff.*, Revised Statutes. He advises the establishment, in place of the consular courts, of purely judicial tribunals. As showing the inadequacy of native tribunals for this purpose he says: "In China, as in nearly all the countries of the East, where extraterritoriality of jurisprudence obtains, there is no adequate system of native jurisprudence to serve as a basis for a mixed tribunal, and little or no indication that the native Governments appreciate the insufficiency of their codes or are disposed to move for a reform therein. I may remark, nevertheless, that in Japan the case is different. The rapid assimilation of the native methods of that Empire to Western standards makes the creation of an international court there a probability in the near future."

Mr. Blaine, Sec. of State, report to President, Dec. 19, 1881. MSS. Report Book.

"I have the honor to bring to your attention the inclosed copy of a letter of the 3d ultimo, from Stephen P. Mirzan, praying for a pardon.

"The story of the crime may be briefly stated as follows: On the 17th of July, 1879, Alexander Dahan, a distinguished lawyer and esteemed gentleman, met Stephen P. Mirzan in the streets of Alexandria, Egypt, where they had angry words and finally came to blows, Mirzan striking Dahan. Dahan ran away, fleeing through a corner book-store, in at one door and out at another, closely pursued by Mirzan, who, as Dahan passed out of the second door, shot him through the back of the head, the ball coming out through the forehead. Dahan died instantly. He was a subject of Turkey.

"Mirzan was tried at Alexandria before the late Horace Maynard, then minister of the United States to Turkey, convicted of murder in the first degree June 12, 1880, and sentenced to be hanged October 1, 1880.

"President Hayes commuted this sentence to life imprisonment in an American prison at Smyrna. This commutation is dated July 29, 1880.

"The 3d of August, 1882, President Arthur directed that Mirzan be brought to Albany and that the remainder of his sentence be served out at the penitentiary at that capital. He was accordingly transported thither, where he is now confined.

"Of the legality of Mirzan's trial and conviction there can be no doubt, as both your Department and the higher courts of this country

have affirmed and recognized our extraterritorial jurisdiction in such cases under our statutes.

"Although numerously signed petitions for Mirzan's pardon have reached this Government, Presidents Hayes and Arthur have each declined to exercise their prerogative except as previously stated.

"Mrs. Marie Antoinette Mirzan, wife of Stephen P. Mirzan, has also sought on frequent occasions to have her husband pardoned. In reply to one of her letters Mr. Blaine, Secretary of State, wrote, November 14, 1881, as follows:

"'I am directed by the President to express his regret that nothing in your husband's case, in his judgment, calls for the exercise of the President's prerogative further for his relief. A full review of the case was made by President Garfield, which resulted in finding no ground for extending clemency beyond the commutation of the death penalty decreed by the court; and nothing has since then been adduced to lead President Arthur to modify the conclusions reached by his predecessor.'

"On the 26th of January, 1882, Mr. Frelinghuysen, late Secretary of State, in a letter to Mrs. Mirzan, adhered to the conclusions of the Department's previous letter of November 14, 1881. He also said:

"'The President, however, desires me to add that when a longer time shall have elapsed from the conviction of your husband of the very grave offense with which he was charged, you may feel at liberty to renew the application, supported by such recommendations from the prison officers and people of Symrna as you may be able to obtain, and that the subject will then receive renewed and serious consideration.'

"On January 14, 1883, Mr. Frelinghuysen, writing to Mirzan, stated that the President did not feel justified in further interfering with the course of justice.

"The question of Executive clemency would appear to be the only one open. As to this, however, it may incidentally be remarked that the main objection to Presidential clemency being accorded is that it would undoubtedly have an injurious effect on our treaty discussion with the Government of Turkey, of which, as stated, Dahan was a subject. Turkey would doubtless make use of Mirzan's pardon as an evidence that this Government favored its citizens even when appearing to try them.

"While doubtful of the expediency of a pardon or reduction of sentence at this time, less than six years from the commission of the murder, yet I have no desire to interfere with Mirzan's application having the fullest possible consideration, and upon receiving an intimation from you that you desire to give attention to his petition, with a view to a decision on its merits in connection with his confinement, and a report from the prison authorities at Albany, as foreshadowed by Mr. Frelinghuysen, I shall take pleasure in furnishing you with such copies of the record in Mirzan's case as may be necessary to a fuller and more complete understanding of the subject.

"I have delayed responding to Mirzan's letter until I shall be apprised of the decision of your Department in the premises."

Mr. Bayard, Sec. of State, to Mr. Garland, Atty. Gen., June 16, 1885. MSS. Dom. Let.

"Your letter of the 21st instant has been received. It relates to the case of J. M. Ross, alleged to be a British subject, who, having in 1880 killed a fellow-seaman named Robert Kelly, on the American ship Bullion, in the harbor of Yokohama, was tried by the United States consular court there, convicted, and sentenced to death, which penalty was later commuted by the President to imprisonment for life in the Albany penitentiary, where Ross is now confined.

"You state that Ross 'wishes to have his case reviewed on the ground that the court had not jurisdiction of his person, he being then and now a British subject.'

"The question of jurisdiction in Ross's case has already had full consideration on two pleas—want of jurisdiction of his person and unconstitutionality of the form and manner of trial. The latter plea, being of municipal competence, was before the circuit court of San Francisco on a writ of habeas corpus, sued out by Ross on reaching that port, on his way from Yokohama to Albany, April 4, 1881, and the court dismissed the writ. The constitutionality of the judicial extraterritorial procedure prescribed by statute under the authority of the treaty is established. This branch of the question can be municipally tested by being brought before the United States courts by habeas corpus.

"The plea that Ross, being an alien, was beyond the jurisdiction of the consular court, was raised by the British Government. * * *

"This Government denied the plea on the admitted doctrine that the sovereign of the flag of a ship has jurisdiction of crimes committed by foreigners on such ship on the high seas or in ports where the courts of the United States have jurisdiction, and that Ross, being a duly articled seaman on an American ship, was within the statutory and treaty jurisdiction of the United States court at Yokohama. If this phase of the question is to be revived, it can only be presented by the British Government through the diplomatic channel."

Mr. Porter, Asst. Sec. of State, to Mr. Stimson, June 28, 1886. MSS. Dom. Let.

"By treaty stipulations with most non-Christian countries, the United States has acquired a right of extraterritoriality.

"Congress has enacted certain statutes for carrying into effect the provisions of treaties in this respect by conferring judicial powers upon consular officers and original or appellate jurisdiction upon diplomatic agents. These statutes are embraced in sections 4083 to 4130, inclusive, of the Revised Statutes. It is the duty of all diplomatic agents in those countries to acquaint themselves with these provisions of law.

"For the convenience of the diplomatic agent, certain particulars concerning his original powers and functions, and his advisory, supervisory, or appellate relations to consular officers exercising extra territorial jurisdiction in the same country, are herein given, premising that

our legislation on the subject is in a very unsatisfactory and uncertain condition, which Congress has been asked to remedy.

"The jurisdiction of both ministers and consuls in criminal and civil matters is to be exercised in conformity, 1st, with the laws of the United States; 2d, with the common law, equity, and admiralty; and 3d, with decrees and regulations, * * * made by the ministers of the United States in each country, respectively, to supply defects and deficiencies in the laws of the United States, or the common law as above defined.

"This power of the minister to make laws and regulations is limited, by construction of the Department, as not imparting to him an arbitrary power of legislation, but as remedial and confined to acts necessary to organize and give efficiency to the courts created by the act.

"The authority conferred by the statute is defined to be a *judicial* authority. The minister is required to execute the power in *conformity with the laws of the United States*, with authority to supply defects and deficiencies in two cases only: (1) Where those laws are not adapted to the exercise of the judicial authority conferred by the statute. (2) Where they are deficient in provisions to furnish suitable remedies. In each of these contingencies the minister has authority to make regulations in order '*to furnish suitable and appropriate remedies*,' and for no other purpose whatever. Every power named in the statute in this respect is conferred upon the minister, '*in order to organize and carry into effect the system of jurisprudence.*'

"It is provided that the ministers shall prescribe the forms of all processes to be issued from the consular courts, the mode of executing and the time of returning the same; the manner in which trials shall be conducted, and how the records thereof shall be kept; the form of oaths for Christian witnesses, and the mode of examining all other witnesses; the costs to be allowed to the prevailing party, and the fees to be paid for judicial services; the manner in which all officers and agents to execute process shall be appointed and paid; the form of bail bonds, and the security which shall be required from the party who appeals from the decision of a consul. He is required to make from time to time such further decrees and regulations as may be necessary. It is his duty also to establish a tariff of fees for judicial services, to be paid by such parties and to such persons as he shall direct.

"The statute further provides that all such regulations, decrees, and orders shall be plainly drawn up in writing, and submitted, as hereinbefore provided, for the advice of the consuls, or as many of them as can be consulted without prejudicial delay or inconvenience, and each consul shall signify his assent or dissent in writing, with his name subscribed thereto. After taking such advice, and considering the same, the minister in each of those countries may, nevertheless, by causing the decree, order, or regulation to be published with his signature thereto, and the opinions of his advisers inscribed thereon, make it binding and obligatory, until annulled or modified by Congress; and it shall take effect from the publication or upon any subsequent day named in the act.

"All such regulations, orders, and decrees shall, as speedily as may be after publication, be transmitted by the ministers, with the opinions of their advisers, as drawn up by them severally, to the Secretary of State, to be laid before Congress for revision.

"The forms and practice in each consular court have now become settled by usage. Each consul is required to conform to them. Should he find defects in any part of the existing system, he will call the atten-

tion of the diplomatic representative of the United States to them. The power of directing a change is vested in that officer by law, and should be exercised, if called for by circumstances, in the manner prescribed in the foregoing sections.

"The power of commencing original, civil, and criminal proceedings is vested in consular officers exclusively, except that capital cases for murder or insurrection against the Government of either of the countries named in the statute, or offenses against the public peace amounting to felony under the laws of the United States, committed by citizens of the United States, may be tried before the minister. Original jurisdiction is vested in the ministers also in cases where the consular officer is interested either as party or witness.

"A perusal of the several sections of the existing statutes may leave the diplomatic agent in doubt as to whether it was the intention of Congress to make his jurisdiction in capital cases exclusively original, or exclusively appellate, or either, as the case may be, or simply revisory. Section 4084 gives to *ministers and consuls* in China, Japan, Siam, Egypt, and Madagascar power to arraign and try 'all citizens of the United States charged with offenses against the law.' Section 4086 refers to the jurisdiction so conferred as exercisable 'in both criminal and civil matters.' Section 4087 authorizes each of the consuls at ports in the above-named countries to arrest and try all offending citizens of the United States. Section 4090 provides that capital cases may be tried before the minister if allowed jurisdiction by treaties. Section 4091 authorizes each of the ministers in the countries named 'to hear and decide all cases, criminal and civil, which may come before him, by appeal,' in cases where appeal is provided. Section 4102 provides that insurrection or rebellion against the Government of either of those countries, and murder, shall be capital offenses punishable with death, but no person shall be convicted unless the consul and his associates all concur, and the minister also approves of the conviction. Section 4106 provides that where the consul shall be of the opinion that associates will be useful, there shall not be less than four such associates in capital cases. Section 4108 provides that the jurisdiction allowed by the ministers in the countries named above shall be exercised by them in those countries wherever they may be. Section 4109 provides that the jurisdiction of the minister, in all matters of crimes, 'except in capital cases, * * * shall be appellate only.'

"If in doubt on these points it may be advisable, wherever there is a consular court established, for the diplomatic agent to confine his jurisdiction to matters of revision and appeal, as the course most consonant with the usual principles of justice which it is made his duty to apply.

"The statute provides that in the case of a conviction entailing the death penalty, it shall be the *duty* of the minister to issue his warrant for the execution of the convict, appointing the time, place, and manner; but if the minister is satisfied that the ends of public justice demand it, he may from time to time *postpone such execution;* and *if he finds mitigating circumstances which authorize it,* he may submit the case to the President for pardon.

"As this provision stands it appears to make the diplomatic agent the sole judge of the propriety of extending Executive clemency to the convict. It was probably not the intent of Congress to bar the exercise of the President's power of pardon at the discretion of a diplomatic agent; and it would be manifestly improper as well as of doubtful constitutionality to do so in the possible case of conviction being had before the officer

whose duty it is made to execute the sentence. In cases coming under this statutory provision the Department of State deems it advisable that the diplomatic agent should always regard the ends of public justice as requiring postponement of the execution until the case is reported and copies of the judgment and testimony are transmitted to the Department of State and the President's views in the premises shall have been received.

"Consuls may also, when of opinion that legal questions may arise in which assistance will be useful, or that a punishment in excess of one hundred dollars' fine or sixty days' imprisonment is required, summon associates, citizens of the United States, not more than four in number, taken by lot from a list to be previously approved by the minister, to sit with them on the trial, each of whom is to enter upon the record his judgment and opinion, and to sign the same; but the consul himself gives the judgment in the case, whether it accords with that of his associates or not.

"In trials for capital offenses there must be not less than four associates, who must all agree with the consul, and the opinion must be approved by the minister before there can be a conviction.

"It is the duty of a consular officer after arrival at his post to make himself acquainted with the leading resident citizens of the United States, in order that he may nominate for the approval of the minister a list of individuals for the purposes of the statute.

"The list should be full, so as to embrace, if possible, every interest in the community. It should be composed exclusively of citizens of the United States of good repute residing at the place. From time to time it should be revised. No person should be permitted to act as an associate on a trial who has any interest, direct or contingent, in the suit.

"Section 4106 of the Revised Statutes seems to give consuls only the discretionary power to summon associates. In practice, however, it is customary for the minister to exercise this power in cases where he has original jurisdiction.

"In the infliction of punishments on persons convicted in consular courts, diplomatic agents as well as consular officers are expected to be governed by the provisions of the statutes of the United States prescribed for similar offenses, and will be careful that the sentence in each case is in conformity therewith.

"It is the duty of diplomatic agents equally with consular officers to encourage the settlement of controversies of a civil character by mutual agreement, or by submitting them to the decision of referees; and the form of such submission is to be acknowledged before the officer. After hearing any case the referees are required to deliver their award, sealed, to the officer, who is to open it in court. If he accepts the award he shall indorse the fact, and render judgment thereon. The parties, however, may always make a settlement before return is made to the officer.

"In some criminal cases it is lawful for the parties concerned therein, with the assent of the minister in the country, or consul, to adjust or settle the same among themselves upon pecuniary or other considerations.

"The minister is authorized to hear and decide all cases, criminal and civil, which may come before him by appeal, and to issue all processes necessary to execute the power conferred upon him; and he is fully empowered to decide finally any case upon the evidence which comes up with it, or to hear the parties further, if he thinks justice will be promoted thereby. He may also prescribe the rules upon which new trials

may be granted, either by the consul or by himself. Provision is also made for appeal in certain cases from the decision of the minister to the circuit court for the district of California.

"An appeal may be taken to the minister from a decision of a consul acting alone, where the fine exceeds one hundred dollars or the term of imprisonment for misdemeanor exceeds sixty days.

"If associates sit with the consul in criminal proceedings (except capital and except in the case mentioned in the preceding paragraph) an appeal can be taken to the minister only in the event of disagreement between the consul and any of the associates.

"In civil cases the consul is required to summon, under the statute, associates, therein described, to sit with him (1) when he is of opinion that the case involves legal perplexities, or (2) when the damages demanded exceed five hundred dollars. In a case in which the damages demanded do not exceed five hundred dollars, if he decide the case without aid, his decision is final. But in such cases when associates sit with the consul, an appeal can be taken to the minister where there is a disagreement of opinion between any of the associates and the consul."

Printed Pers. Inst., Dip. Agents, 1885.

As to consular jurisdiction in Turkey of homicides of Turks by United States citizens, see Mr. Evarts, Sec. of State, to Aristarchi Bey, Mar. 30, 1878 MSS. Notes, Turkey.

For reports on judicial functions of consuls, see MSS. Rep. Book, Dept. of State, vol. 8, pp. 97, 233, 369, 379, 469.

As to consular jurisdiction in Mahommedan countries, see Mr. Webster, Sec. of State, to Mr. Payne, Mar. 30, 1851. MSS. Inst., Barb. Powers.

As to appeals from consular courts, see letter of Mr. Fish, Sec. of State, to Senator Butler, Mar. 24, 1875. MSS. Dom. Let.

In Senate Ex. Doc. No. 25, 41st Cong., 3d sess., will be found a "copy of regulations for the consular courts of the United States in Japan, decreed and issued by the minister of the United States for that country."

As to passports by consuls in Oriental lands, see *infra*, § 191.

As to consular jurisdiction under treaties, see *supra*, § 68; *infra*, § 153. See also Mr. Sheppard's pamphlet on Extraterritoriality, in reference to Japan. The question of foreign consular jurisdiction over crimes is examined with great fullness in 4 Lawrence Com. sur droit int., chap. i. See also Schuyler's Am. Diplom., 64 *ff*.

Judicial powers are not necessarily incident to the office of consul, although usually conferred upon consuls of Christian nations in pagan and Mohammedan countries for the decision of controversies between their fellow-citizens or subjects residing or commorant there, and for the punishment of crimes committed by them. The existence and extent of such powers depend on the treaty stipulations and positive laws of the nations concerned.

Dainese *v.* Hale, 91 U. S., 13.

The treaty between the United States and the Ottoman Empire, concluded June 5, 1862 (if not that made in 1830), has the effect of conceding to the United States the same privilege in respect to consular courts and the civil and criminal jurisdiction thereof which are enjoyed by other Christian nations; and the act of Congress of June 22, 1860, established the necessary regulations for the exercise of such jurisdic-

tion. But as this jurisdiction (that of consular courts) is, in terms, only such as is allowed by the laws of Turkey, or by its usages in its intercourse with other Christian nations, those laws or usages must be shown in order to know the precise extent of such jurisdiction.

Ibid.

The defendant, when consul-general of the United States in Egypt, in 1864, issued an attachment against the goods of the plaintiff there situate. Plaintiff, and the persons at whose suit the attachment was issued, were citizens of the United States and not residents or sojourners in the Turkish dominions. For this act the plaintiff brought suit in this country to recover the value of the goods attached. The defendant pleaded his official character, and, as incident thereto, claimed jurisdiction to entertain the suit in which the attachment was issued. It was held that the plea was defective for not setting forth the laws or usages of Turkey upon which, by the treaty and act of Congress conferring the jurisdiction, the latter was made to depend, and which alone would show its precise extent, and that it embraced the case in question.

Ibid.

A consular court is a court of limited jurisdiction, and all the jurisdictional facts must be alleged in the libel or petition; otherwise it will be insufficient. In cases of appeal from the consular and ministerial courts of China and Japan to the circuit court of the United States for the district of California, the record on appeal must show an allowance of the appeal. A citation is necessary, unless the appeal is allowed in open court, though it may be questioned whether a citation is not always necessary, if the consular court has once adjourned after rendering a decree, there being no terms of such courts.

Steamer Spark v. Lee Choi Chum, 1 Sawyer, 713.

The question of extraterritorial jurisdiction for crime is discussed, in its general relations, *supra*, § 9, *ff.*

In the absence of any specific appropriation for the object, the expense of transferring prisoners, held by the authorities of the United States in China, from Amoy to Hong-Kong for trial on a charge of piracy, is a lawful charge upon the judiciary fund, so called, being the fund appropriated for defraying "the expenses of prosecutions for offenses committed against the United States, and for the safe-keeping of prisoners."

6 Op., 59, Cushing, 1853.

Consuls at the Barbary ports, and in general in other Mohammedan countries, must not be confounded in respect of functions or of regulations with the consuls established in the countries of Christendom. Their condition is referable to peculiar doctrines of the law of nations,

and they are governed in many respects by particular treaties and acts of Congress.

7 Op., 242, Cushing, 1855.

Congress has empowered the commissioners and consuls of the United States in China to exercise judicial authority over their fellow-citizens. The consuls have original jurisdiction, each within his consular circumscription, in civil cases involving a question of damages which arise between two or more citizens of the United States, and in all cases of crime committed by a citizen of the United States. In civil matters if the damage demanded exceed five hundred dollars then, of necessity, and in other cases, if the consul see fit, the consul is to summon to his aid not less than two nor more than three citizens of the United States, as assessors, who shall with him hear the case.

If the associates concur in opinion with the consul, his decision is final; but if they differ with him, their opinions are to be noted on the record, and either party may appeal to the commissioner. In civil cases, and in all criminal cases except capital offenses, the commissioner's authority is appellate. In capital cases there is no appeal, but the conviction is invalid unless approved by the commisioner, who, if he approve it, is either to issue a warrant of execution, or, in his discretion, submit the case to the President for pardon.

7 Op., 495, Cushing, 1855.

In all criminal cases, except capital and certain minor offenses, the consul must summon one or more citizens of the United States, not exceeding four, to sit with him. If they concur, the decision is final; if they differ, the case, with the record and all the evidence, is referred to the commissioner, who may either determine it, or, if he choose, remit the case with instructions to the consul for further proceedings.

Ibid.

In certain minor cases the consul may sit alone; in capital cases he must always proceed with four associates. But in a civil controversy between a Chinese and an American, the authorities of the two Governments are to have concerted action.

Ibid.

Controversies occurring in China between citizens of the United States and subjects of any other (Christian) Government, are to be regulated by the treaties existing between the United States and such Governments, respectively.

Ibid.

In the exercise of their jurisdiction the consul and his associates, and the commissioner, are to be guided by the laws of the United States, the common law, and such supplemental decrees and regulations as the

commissioner may from time to time make. The commissioner, in this sense, is the person vested with the powers of chief diplomatic functionary of the United States.

Ibid.

In civil cases, not involving a question of damages, the safer course would be to adhere, so far as may be, to the spirit of the law, which makes the commissioner the appellate supervisor of the judicial acts of the consuls.

Ibid.

In the Levant the general system is (1) Turkish tribunals for questions between subjects of the Porte and foreign Christians; (2) consular courts for the business of each nation of foreign Christians; (3) trial of questions between foreign Christians of different nations in the consular court of the defendant's nation; (4) mixed tribunals of Turkish magistrates and foreign Christians substituted by common consent in part for cases between Turks and foreign Christians; (5) finally, for causes between foreign Christians, the substitution also, of mixed tribunals in place of the separate consular courts. To all these extraterritorial privileges Americans are entitled.

7 Op., 565, Cushing, 1855.

The judicial authority of the United States commissioner to China is restricted to the five ports mentioned in the treaty with that nation.

9 Op., 294, Black, 1859.

Under the act of August 11, 1848, the United States consuls in Turkey have judicial powers only in criminal cases.

9 Op., 296, Black, 1859.

The salary of a person appointed marshal of the United States consular court at Shanghai begins from the time of his entering upon such duties as are preliminary to his departure for the field of his services after taking the oath of office and giving the bond prescribed by law.

10 Op., 250, Bates, 1862.

A United States consular court in Japan cannot, in a suit against a citizen of the United States by a Dutch subject, allow a claim of set-off beyond the extent of the plaintiff's demand. Nor can such a court in Japan render a judgment against a person not a citizen of the United States.

11 Op., 474, Speed, 1866.

The consular courts of the United States at Honolulu have the exclusive right of determining disputes occurring among the crew of a vessel of the United States, under the "favored-nation" clause of the treaty, such a concession having been made to France.

11 Op., 508, Speed, 1866.

In the case of consular courts vested with criminal jurisdiction, as in the case of other courts having similar jurisdiction, a sentence of imprisonment cannot be legally executed beyond the territorial jurisdiction of the court which pronounces it, unless by legislative authority. Hence, in the absence of any act of Congress, convicts of the consular courts at Smyrna and Constantinople, if sent to the United States for imprisonment, could not legally be held.

14 Op., 522, Williams, 1875.

In the United States Consular Regulations (ed. of 1881) the law as to consuls is thus declared: "In Mohammedan and semi-civilized countries the rights of extraterritoriality have been largely preserved, and have been generally confirmed by treaties to consular officers. To a degree they enjoy the immunities of diplomatic representatives, besides certain prerogatives of jurisdiction, together with the right of worship, and, to some extent, the right of asylum" (§ 80). These immunities extend to an exemption from both the civil and criminal jurisdiction of the country to which they are sent, and protect their household and the effects covered by the consular residence. Their personal property is exempt from taxation, though it may be otherwise with real estate or movables not connected with the consulate. Generally they are exempt from all personal impositions that arise from the character of a subject or citizen of the country (§ 81). "The consular jurisdiction in these countries is both civil and criminal, and has in most cases been provided for by the stipulations of treaties. The extent of its exercise, as well as the penalties and punishments to be enforced, depend generally upon the laws of his own country to the exclusion of the jurisdiction of all local tribunals." (See Lawrence's Wheaton, 73, 74, notes. The question, on its criminal side, is discussed in Wharton's Criminal Law, 8th ed., § 273; and see Strupp, *in re*, 11 Blatch., 124.)

Such jurisdiction, however, is limited to barbarous or semi-civilized states. (The William Harris, Ware, 367.) Nor, in England, will a foreign consul be regarded as entitled as such to administer the estate of a domiciled subject of the country which such consul represents. (And see Schuyler's Am. Diplom., 64, *ff.*)

"Consuls have exclusive jurisdiction over crimes and offenses committed by citizens of the United States in Borneo, China, Japan, Madagascar, and Siam. In Morocco, Tripoli, and Tunis the consuls are empowered to assist in the trials of citizens of the United States accused of murder or assault. In Persia citizens of the United States committing offenses are to be tried and judged in the same manner as are the subjects of the most-favored nations. Americans committing offenses in Turkey should be tried by their minister or consul, and are to be punished according to their offense, following, in this respect, the usage observed toward other Franks; but, in consequence of a disagreement as to the true text of the treaty, consuls in the Ottoman dominions are instructed to take the directions of the minister of the United States at Constantinople in all cases before assuming to exercise jurisdiction over criminal offenses." (See *infra*, § 165.)

"In China and Japan the judicial authority of the United States will be considered as extending over all persons duly shipped and enrolled upon the articles of any merchant vessel of the United States, whatever be the nationality of such person. And all offenses which would be

justiciable by the consular courts of the United States, where the persons so offending are native-born or naturalized citizens of the United States, employed in the merchant service thereof, are equally justiciable by the same consular courts in the case of seamen of foreign nationality.

"Seamen serving on board public vessels of the United States, who have committed offenses on shore in Japan and China, are held to be subject to the jurisdiction of the consul of the country under whose flag they are serving.

"Jurisdiction over civil disputes is conferred by treaties with Borneo, China, Japan, Ottoman Porte, Madagascar, Siam, Morocco, Muscat, Persia, Tripoli, Tunis, and the Samoan Islands. This jurisdiction is exclusive in disputes between citizens of the United States. In Persia suits and disputes between Persian subjects and American citizens are to be heard before the Persian tribunal where the consul is located, and in the presence of an employé of the consul. In Japan it extends to claims of Japanese against Americans. In China, Siam, and Samoa the jurisdiction is joint in controversies between Americans and Chinese, Siamese, or Samoans. In Madagascar the exclusive jurisdiction extends to disputes between citizens of the United States and subjects of Madagascar. In Turkey there can be no hearing in a dispute between Turks and Americans unless the dragoman of the consulate is present."

U. S. Cons. Reg., 1881, § 98, *ff*.

Article XXIX of the same regulations (1881) treat of consular jurisdiction "in Oriental, non-Christian, and uncivilized countries," as follows: Judicial powers; mixed courts; what laws to govern proceedings; forms of proceedings; limitation of consular jurisdiction; appeals; marshals, jails, &c.

That consuls in Oriental lands cannot extradite, see App., Vol. III, § 268.

As to consular jurisdiction in Turkey, see App., Vol. III, § 68*a*.

As to right of a British subject in Siam to elect a Siamese as distinguished from a British consular court, see London Saturday Review, Mar. 26, 1887, 443.

As to practice of consular courts in China, see App., vol. III, § 125.